

# Deceased tenants

The following information relates to the actions to be taken by NCCH once notified of the death of a tenant.

## Rental charges and payments

Once notified of the tenants' death, NCCH will reduce the tenant's rent to \$1 per week, effective from the date of death. This nominal "occupation fee" is charged for a maximum of 28 days only.

Once the 28 day period has expired, market rent is charged for the accommodation.

Any automatic rent deductions are cancelled.

## The Representative

NCCH seeks to promptly identify the most appropriate, available person to act as the legal representative of a deceased tenant in order to offer up vacant possession of their property.

NCCH takes all reasonable steps to substantiate the legitimacy of the legal representative.

The rights of a legal personal representative (LPR) in law are superior to that of a "next of kin" of the deceased. An LPR is appointed as an executor by the deceased in their Will, or by a court which grants letters of administration to an individual so that they may act as an LPR.

When the next-of-kin is in contact with NCCH, we must take reasonable steps to identify the tenant's legal personal representative.

In situations where two or more potential LPRs are in dispute as to who will administer the estate, NCCH will seek relevant legal advice.

## Removal of goods from the property

To be entitled to remove goods from the rental property and offer up vacant possession, the LPR must:

- be the executor appointed by the tenant in their Last Will and Testament (Will), or
- **in the absence of a Will**, complete a 'Notification of Death' form to the effect that they are the next-of-kin of the deceased, eligible to apply to the Court for letters of administration, or
- be a State Trustee, when no other legal representative is available.

If there is no estate executor, the next of kin of the tenant is regarded as the legal representative.

Where an executor has been appointed by the deceased in their Will, their rights to administer the estate supersede those of the legal representative.

NCCH will send the legal personal representative a Notification of Death form. If the Notification of Death form has not been returned within 7 days, NCCH may issue a Termination Notice for the tenancy, pursuant to section 108 of the Residential Tenancies Act.

## No representation

Where no LPR/next-of-kin of a deceased tenant is known, NCCH will contact the NSW Police and/or NSW Trustee and NSW Trustee and Guardian ("the Trustee"). The administration of a deceased estate vests with the Trustee in the instance that no LPR/next-of-kin exists, has not been identified or cannot be located.

The Trustee will attempt to locate an LPR, and administer the estate until such time as a more suitable administrator is located. The Trustees will be requested by staff to provide the NCCH with written notification of the death as soon as possible, and notify the NCCH of their intention to act as administrators of the deceased estate.

If no LPR or NEXT-OF-KIN has been identified, and the Trustee is unwilling to assist, NCCH must apply for an order to terminate the tenancy pursuant to s.108 of the Act.

## Entering the property

NCCH staff may not enter the property of a deceased sole tenant until vacant possession has been offered by the identified next-of-kin/LPR, or by executing a warrant of possession obtained from the NSW Civil and Administrative Tribunal (NCAT).

Until vacant possession has been obtained, only the next-of-kin/LPR (including the Trustee), or a person authorised by the LPR (including NCCH staff) can enter.

If neither NCCH nor the LPR is in possession of the keys, the NCCH arranges a contractor to change the locks in the presence of NCCH staff. The keys are given to the LPR.

### Supervised access

In situations where NCCH have keys to the property and a legal personal representative is not known, access may be provided by NCCH to another person under the conditions described in this section.

Access, attended and supervised by NCCH staff, can be allowed in circumstances where:

- arrangements need to be made to feed and/or remove pets, or
- perishables require disposal.

The person requesting access is advised that they will be accompanied by a staff member, and they are not to remove any personal papers or belongings of the deceased, with the exception of funeral requisites, perishables and pets.

Where a person wishes to reclaim their own belongings which are stored at the rental property and ownership can be proven as the third party's belongings, it is appropriate to allow those items only to be taken. For example, a passport, or other personal documents.

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## Unsupervised Access

Only the following people are permitted unsupervised access to the rental property:

- an LPR of the deceased estate;
- or in the absence of an LPR, the next-of-kin;
- a property inspector for State Trustees acting as LPR; or
- Police Officers authorised by State Trustees to act on their behalf.

## Removal of goods

It is the responsibility of the LPR of the deceased to arrange removal of all goods from the property before returning the keys. Goods left behind in the property are treated as abandoned goods (see Abandoned Properties and Goods Left Behind for further information).

According to the Act, upon the death of a tenant, the tenancy can be terminated at any time by the tenant's executor, any other legal personal representative, or the landlord.

In these situations the estate will only be liable to pay an occupation fee (equivalent to the rent) until vacant possession is given to the landlord. The occupation fee is an amount equivalent to the rent. NCCH has made a policy decision to waive the full occupation fee it is entitled to in these circumstances and charge a nominal occupation fee only of \$1 per week, for a period not exceeding 28 days.

Once this 28 day period has expired, full market rent is charged for the accommodation.

When issuing a Notice to Terminate, there is no prescribed period of notice and the termination may be given during a fixed term agreement

## Keys not returned by LPR

In situations where the keys have not been returned to the unit by the date nominated by the LPR or within 28 days of the date of the death of the tenant, NCCH will issue a Termination Notice under s.108 of the Act to the LPR and possession will be sought, if required, through application to the NCAT.

Market rent continues to be charged, as an occupation fee, to the deceased estate until the tenancy is terminated by the NCAT.

## INFORMATION

Title	Deceased tenants
Section	Housing Services
National Regulatory Code Evidence Guideline	Performance Outcome 1: Tenant and Housing Services
National Community Housing Standard	Standard 1.4 Ending tenancies
Last review	31 July 2014
Next review	31 July 2017

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