

The Residential Tenancies Act 1997 says that as long as at least one tenant remains, the death of a tenant in a shared tenancy does not end the agreement. This applies equally to private and Housing ACT tenants. What this means is that if your joint tenant dies, your tenancy continues and you should apply as soon as possible for a new rebate.

### EFFECT ON NON-TENANT RESIDENTS

Where there is a Housing ACT tenancy, the tenant dies, and the remaining people living in the house are residents only (not tenants), the situation becomes more complex, as the residents will have no automatic right to stay in the property. However, there are a number of ways the residents could remain in the property.

### TENANCY BY IMPLICATION

A tenancy by implication may arise where Housing ACT is aware of the fact that the tenant has died or left, but continues to accept rent from the remaining residents and takes no action to evict them. In these circumstances there is a strong argument that a new tenancy will arise in favour of the residents, starting from the date that Housing ACT became aware of the changed circumstances. In order for this to happen, all the elements of a tenancy (most importantly the payment of rent and exclusive possession by the occupants) must be satisfied.

### ALLOCATION OF TENANCY TO THE RESIDENTS

Housing ACT has a special discretionary power under the Public Rental Housing Assistance Program to give the remaining resident/s their own tenancy in the dwelling or to provide another dwelling to the remaining residents. The power is available in the situations Housing ACT calls 'breakdown of tenancy', where the tenant dies or leaves or is otherwise unable to occupy the dwelling.

It may be that Housing ACT will choose not to allocate the tenancy to the remaining residents if the resident/s would not qualify for public housing (eg, if their income is too high), or if the house isn't within their entitlement (eg, it has too many bedrooms). However, Housing ACT also have the power to disregard the eligibility criteria where there is severe hardship that cannot be alleviated by any other means. So, if you think you may have special circumstances, it is worth putting your case to Housing ACT, and, if in doubt, seek legal advice.

### TENANCY INHERITED BY SURVIVING RESIDENTS

Currently, the law in the ACT is that a resident who has been bequeathed the tenancy through the will of the deceased tenant

becomes the new tenant. It may be that a tenant dying without having made a will also transfers their tenancy to a person/people who would inherit their estate. It is advisable to seek expert legal advice before relying on either of these possibilities.

If a resident does inherit a tenancy by will, the law then allows Housing ACT to apply to the Residential Tenancies Tribunal to adjust the rent or to have the tenancy terminated. In making its decision, the Tribunal must have regard to the eligibility criteria for public housing. This means that if you meet the eligibility criteria, the Tribunal should allow your tenancy to continue. It also means that if you don't meet the criteria but you have a special case, the Tribunal may still decide that you should keep your tenancy.

See also **Applications for Housing Assistance** (WRLC Fact Sheet 1), **Types of Occupants** (WRLC Fact Sheet 7) and **The Appeals Process** (WRLC Fact Sheet 9).



Welfare Rights & Legal Centre

Advice Line  
6247 2177



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