



# The Case of the Dead Tenant

by Zachary Lawrence JD

I've been in Property Management long enough to have good relationships with long term tenants. Some have been renters for 25 years or more. Their apartment is their home.

Most tenants vacate voluntarily. Some get evicted. And some, unfortunately, pass away.

One of my long term tenants, an elderly man, (let's call him John), did not pay his rent for the month of May 2017. I called and got no answer. I knocked on his door. No answer. I was later informed by another tenant in the building that John had passed away, and that his daughter is now in

possession of the unit.

John's daughter contacted me, informing me that she was

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cleaning up and removing his personal property. She also asked me to rent the property to her at the same rent that John was paying before he had passed.

In this case, there is a

delicate balance between enforcing the legal rights of the landlord and working with the bereaved family members of the deceased. I discussed this matter on my Landlord-Tenant Radio podcast with my friend, mentor and Eviction Attorney, Dennis Block:

**Block:** When a tenant dies inside the unit, a few things happen. Number one, if the deceased was the sole tenant, then the landlord may take possession 30 days from the date that the last rent was received. **Relatives of the deceased do not have the right to take over the tenancy of this unit without the landlord's express written consent.**

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**Zac:** During this thirty day period, who or whom is legally in possession of this unit?

**Block:** The estate of the deceased. Usually, this is a close relative of the deceased. Once the thirty day period has expired, the landlord may change the locks and take legal possession of this unit. During the thirty day period, the landlord does have the right to enter and inspect the unit providing that he posts a Notice to Enter on the front door of the unit.

**Zac:** What if there remains in the unit some personal property of the deceased?

**Block:** When personal property is abandoned by the decedent, the estate has eighteen days to claim the property. There is a Notice called "Notice of Abandonment of Personal Property. This notice should be served on the estate or posted on the front door of the unit during the thirty day period. If the property is worth less than \$700.00, then the landlord is free to dispose of the property. If the property is worth more than \$700.00, the landlord must hold a public auction, publish a notice in the newspaper, and then sell the items.

The proceeds of the property would go towards the cost of the auction and advertising. The balance of the proceeds

*(continued on page 101)*

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would go to the estate of the deceased.

**Zac:** Does the landlord have a duty to disclose to any prospective renter the fact that the prior tenant died?

**Block:** When the former tenant dies inside the unit, the landlord is obligated to disclose this fact to any prospective tenant. However, there is an exception. It's an odd exception. If the deceased tenant died of AIDS, then the law does not require the landlord to disclose this fact to prospective tenants.

**Zac:** If the deceased tenant passed away in a hospital rather than inside the unit, does the landlord still have a duty to

disclose the death to prospective tenants?

**Block:** Great question Zac. The answer is no. Only if the death occurs inside the unit is when the landlord had a duty to disclose this fact. If the tenant dies inside of the unit, the landlord must disclose this fact to prospective tenants during a three-year period from the date that the former tenant had passed away.

### Closing Comments

The landlord should work with estate or family members of the deceased to ensure a smooth and compassionate transfer of possession. Once the landlord has taken posses-

sion of the premises, this unit can be cleaned up and the rent can be raised to market levels. The landlord must decide for himself if he is going to withhold any funds from the deceased security deposit to cover the cost of the cleanup. Under these circumstances, we always return 100% of the security deposit to the estate of the deceased. **AOA**

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