

Death of Tenant



LAWS FOR
**LANDLORDS
AND TENANTS**
IN ALBERTA



When a tenant dies while renting a property, there can be many questions about what to do next. For example, who should a landlord contact to deal with the tenant's stuff? How will the tenant's rent and security deposit be handled? What if the tenant's surviving spouse or interdependent partner is living on the property? Whether you are a landlord, surviving spouse/interdependent partner, personal representative, or next of kin (the tenant's parent, sibling or child), this guide will help answer some of your questions.

What is the difference between a spouse and adult interdependent partner?

A **spouse** is someone who is legally married to the tenant. To be an **adult interdependent partner**, you have to meet one of the following requirements:

- There is an adult interdependent relationship agreement
- You have lived together in a relationship of interdependence for at least 3 years
- You have a child together and lived together in a relationship of interdependence of some permanence

Two people have a **relationship of interdependence** when they:

- Share one another's lives
- Are emotionally committed to one another
- Function as an economic and domestic unit

Partners do not need to share a conjugal (sexual) relationship in order to meet the criteria of being each other's adult interdependent partner.

Landlords

What should I do if the tenant dies on the property?

If the tenant dies on the property and you discover the body, call 911. While you wait for emergency services to arrive, do not touch anything or let anyone else enter the property. Emergency services will determine what happens next.

Who should I contact to deal with the tenant's stuff?

When someone dies in Alberta, all of their belongings (such as money, bank accounts, personal and real property) become part of their estate. If you have information about the tenant's family, then contact them about the tenant's death and verify if there is a will. If there is a will, the document will have someone named as a personal representative (previously known as the executor). The personal representative is responsible for dealing with the estate. The personal representative will become your contact for rent, the move-out inspection, and the return of the security deposit.

What happens to the lease?

If there are no other tenants in the unit, the tenancy is considered terminated on the earliest date that the tenant could have terminated it under the *Residential Tenancies Act*. The termination date depends on whether the rental agreement was periodic or fixed term. For example:

- The tenant had a periodic monthly lease and died on February 4. The earliest date that the lease ends would be March 31.
- The tenant had a fixed term lease from January 1 to December 31 and died on June 15. The earliest date that the lease ends would be December 31 (the end date of the fixed term lease).



TIP: The estate (or anyone responsible for administering the estate) cannot end a tenancy without:

- obtaining the consent of the tenant's surviving spouse/partner or
- a court order approving the end of the tenancy

If the personal representative of the estate asks to end a fixed term lease early and there is no surviving spouse/partner, the landlord can consider renting out the unit again. The landlord and personal representative can try to work out an agreement with rental payments until the landlord finds new tenants. Any agreement should be in writing.

Who's responsible for rent and the security deposit?

Unless a court order or the tenant's will says otherwise, the deceased tenant's estate is responsible for:

- rental payments
- security deposit
- the cost for insuring household goods
- utility costs as required by the lease (for example, electricity, gas, water)



TIP: Household goods are property owned by the tenant or the tenant's spouse/partner, used for transportation or household purposes. For example, furniture and vehicles.

There's another person living in the property. Can I end the tenancy?

Whether you can end the tenancy depends on who the other person is.

Is the person the tenant's spouse or interdependent partner?

Under the *Wills and Succession Act*, the spouse or interdependent partner is allowed to stay in the property for a temporary period of 90 days (known as a **period of temporary possession**). Even if the spouse or interdependent partner is not named on the tenant's lease, he or she is deemed to be the tenant for all matters, except in relation to rent and security deposits. To end the tenancy during the period of temporary possession, the estate (or anyone responsible for administer the estate) must:

- obtain the spouse or interdependent partner's consent or
- make a court application to end the tenancy

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You can apply to terminate, shorten or extend the period of temporary possession. In making such an order, the judge will consider:

- the availability of other accommodation within the spouse/partner's means
- the landlord's interest in the property as an owner
- the interest of a purchaser of the home, if any
- any other factors that the court believes are relevant

Is the person neither the tenant's spouse or interdependent partner but named on the lease?

You have an obligation to continue renting to this individual until the end of the lease. You may want to discuss how to handle rental payments and take the deceased tenant's name off the lease. You will need to work with the personal representative in deciding what to do with the security deposit and any unpaid rent.

The person is not named on the lease and not the tenant's spouse or interdependent partner. What can I do?

If you did not provide permission for the person to live in the property, you can issue a notice to vacate.

The tenant's spouse or interdependent partner is staying in the property for the period of temporary possession...

What happens if the rent is not being paid?

You can make a court application to have the spouse or interdependent partner pay the rent and any other costs that arise if:

- the personal representative says that there is no money in the estate and
- the spouse or interdependent partner is staying in the property

The court will consider many factors in deciding who should be responsible for paying those things. You can also make a court application to shorten or terminate the period of temporary possession.

What if the spouse or interdependent partner is not maintaining the property?

The spouse or interdependent partner must maintain the rental property and keep it in a state of reasonable repair, taking into account the state of repair at the time of the tenant's death. If they are not maintaining the property, you can make an application to have them or the estate take steps to maintain it. You can also apply for a court order to shorten or terminate the period of temporary possession.

Can I enter the property while the spouse or interdependent partner is living there? Can anyone else enter the property?

The landlord has the right under the *Residential Tenancies Act* to enter the property with at least 24-hour written notice to:

- inspect the state of repair of the property
- make repairs
- control pests to ensure the property meets health standards
- show the property to people who may want to buy the property, or who may provide a mortgage for the purchaser or
- show the property to potential tenants during the last month of a fixed term tenancy, or anytime after a periodic tenancy has been terminated by either the landlord or the tenant.

More information on the landlord's right of entry is on our website: www.landlordandtenant.org.

Under the *Wills and Succession Act*, the personal representative is allowed to enter the property with 24-hour written notice to the home, spouse or interdependent partner at any reasonable time. They can:

- inspect the estate property
- conduct an inventory
- perform repairs
- remove items that are not household goods

What happens if the spouse or interdependent partner moves out?

The period of temporary possession ends when the spouse or interdependent partner moves out of the rental property. You should arrange to have a move-out inspection with the personal representative. Unless there is a court order saying otherwise, you must provide the personal representative with the security deposit and statement of account. There are circumstances where you can make deductions from the security deposit. For example, if there is unpaid rent or damage beyond normal wear and tear. You must follow the rules in the *Residential Tenancies Act* regarding the return of the security deposit. You can learn more about the return of security deposits on our website: www.landlordandtenant.org.

Surviving spouses or interdependent partners

Can I stay in the property after the tenant dies?

If you are the tenant's spouse or interdependent partner, you are allowed to stay in the property for a period of temporary possession – which is 90 days starting from the date the tenant passed away.

Am I responsible for paying rent and utilities?

Unless a court order or the tenant's will says otherwise, the deceased tenant's estate is responsible for:

- rental payments
- security deposit
- the cost of insuring household goods
- utility costs as required by the lease (for example, electricity, gas and water)

If the personal representative says that there is no money in the estate to pay for rent but you stay in the property, the landlord can make a court application to make you pay the rent and any other costs that arise. The court will consider many factors in deciding who should be responsible for paying those things.

Can anyone end my stay during the period of temporary possession?

During the period of temporary possession, the estate cannot make you move out without your consent or a court order. But you can give notice to move out if you want to. If you move out of the rental property, the period of temporary possession is considered to be terminated.

You can also make a court application to end, shorten or extend your period of temporary possession. In making such an order, the court will consider:

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- the availability of other accommodation within your means
 - the landlord's interest in the property as an owner
 - the interest of any purchaser of the home
 - any other factors that the court believes is relevant

Keep in mind that if you fail to maintain the property or the estate fails to pay rent, the landlord can apply for a court order to shorten or terminate the period of temporary possession.

What are some of my responsibilities while I stay during the period of temporary possession?

There are a number of rules that you must follow, for example:

- You cannot rent the property, assign or transfer the tenancy
- You must make sure that the home and household goods are maintained and kept in a state of reasonable repair
- You must allow the personal representative of the deceased estate to enter the home with 24-hour written notice to:
 - inspect the estate property
 - conduct an inventory
 - perform repairs
 - remove items that are not household goods
- You must also allow the owner or co-owner of the property to enter the home at any reasonable time to:
 - inspect the property
 - remove items that are not household goods

Personal representative (also known as executor)

What is a personal representative?

If you are the tenant's personal representative, you will be responsible for administering the tenant's estate. You will be the landlord's contact for paying rent, the move-out inspection, and the return of the security deposit.

I found out that I'm the personal representative for the tenant's estate. What should I do immediately?

- Contact the landlord. Make sure that you both have updated contact information for each other. Inform the landlord of the tenant's death as soon as possible.
- Keep the landlord updated about when the tenant's property will be removed.
- Make arrangements with the landlord to protect the property. For example, the estate will continue to pay rent while you make arrangements to remove the tenant's property.
- Make an agreement about ending the tenancy,

If you do not make arrangements to remove property, then it may be treated as abandoned by the landlord. The *Residential Tenancies Act* sets out rules for how the landlord can dispose of abandoned property.

What is the estate responsible for?

Unless a court order or the tenant's will says otherwise, the estate is responsible for all matters relating to rent and security deposits. The estate is also responsible for the cost of insuring household goods and utility costs as required by the lease (for example, electricity, gas and water).

Can I enter the property?

You are allowed to enter the property on 24 hours written notice to the home, spouse or interdependent partner to do the following:

- inspect the estate property
- conduct an inventory
- perform repairs
- remove items that are not household goods

The tenant's spouse or interdependent partner is staying in the property for the temporary period of possession. Can I terminate their stay?

No, you cannot make them move or give the landlord a notice of termination of the stay. To do so, you will need either:

- the surviving spouse or interdependent partner's consent
- a court order approving the termination of the stay

Next of kin

I'm the tenant's next of kin, what should I do?

The next of kin is a person's relative by blood or adoption. For example, a person's mother, father, brother, sister or children are considered next of kin. If you are the tenant's next of kin, you should find out if the tenant had a will. If so, the personal representative named in the will is responsible for dealing with the tenancy. Get in touch with the personal representative.

If there's no will and you are the tenant's next of kin, you may go to court for authorization to administer the estate. If you are unable or unwilling to administer the estate, the **Office of the Public Guardian and Trustee (OPGT)** may go to court for authorization to do it. More information on administering the estate can be found at the OPGT:

Toll free in Alberta: 1-877-427-4525

www.humanservices.alberta.ca/guardianship-trusteeship.html

The OPGT may also get involved if:

- You are the tenant's next-of-kin but you are under 18.
- You are the tenant's next-of-kin but you have lost the mental capacity to make decisions (i.e., you have a trustee or power of attorney).
- The personal representative (executor) refuses or can't do the job and a vulnerable Albertan has an interest in the estate.

www.landlordandtenant.org

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Where to go for more help and information

> Office of the Public Guardian and Trustee

Toll free in Alberta: 1-877-427-4525
www.humanservices.alberta.ca/guardianship-trusteeship.html

> CPLEA Planning for the Future: Wills, Personal Directives & Powers of Attorney

www.cplea.ca/publications

> Lawyer Referral Service

Provides contact information for lawyers who practice landlord and tenant law in your geographical area.
1-800-661-1095
www.lawsociety.ab.ca/public/lawyer_referral.aspx

> More information on where to get legal advice is on our website: www.landlordandtenant.org/resources



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