



BOROUGH OF BROXBOURNE

LANDLORDS FORUM- 8th May 2024

Ibrahim Balta- Senior Litigation Solicitor

About Legal Services Broxbourne

- In house legal team with a team of 7.
- Residential- Right to buys and commercial properties
- Property litigation
- Residential possession proceedings
- Housing- Judicial Reviews
- Disputed debt claims and land charges
- Criminal Litigation, prosecution on behalf of Broxbourne (Fly-tipping, Licensing, Planning, Housing Act)
- Advise all internal department on any disputed/complicated matters

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Residential Property- Death of a Tenant

What happens if a tenant pass away in your property. Does the tenancy agreement end?

- Tenancy does not end when someone dies. However, most landlords will agree to end the tenancy agreement as early as possible in this situation.
- It is important to note that Rent is due until the tenancy ends. As a landlord you can ask money from the Tenant's estate (which is any money they have/had). If there is no money it is difficult almost impossible to pursue the rent arrears against family members or administrators of the estate. But, if there is a joint tenant or a guarantor you might be able to recover rent arrears from them.
- Joint tenancies and liability- rent for the whole property not just one tenant's share. So, if one tenant does not pay for rent you as the landlord can pursue the arrears from the joint tenant.

- **Death of a joint tenant**

- Where a joint tenant dies the surviving tenant automatically becomes the sole tenant. This is called survivorship right. The surviving tenant will become liable to tenancy obligations, including payment of rent.

- **Succession to a sole tenancy**

- A successor is not liable for any rent arrears owed by the original tenant at the time of their death, arrears cannot carry over to the successor's rent account. However, if the tenancy is subject to a suspended possession order, the successor can lose their home if they cease to pay arrears. Usually, the court order is in effect and the successor must comply with the order for rent arrears.
- If the successor fails to comply with an order, the landlord can issue new proceedings against successor. If the court adds the successor the landlord can enforce the possession order.

- **Discretionary succession**

- Some social landlords operate discretionary or non-statutory succession policies. As a landlord you might allow discretionary succession on the condition that the successor clears rent account. This is discretionary and subject to agreements between landlord and tenants. But, local authorities or social landlords must follow its policies and act fairly.

- **Assured or Assured Shorthold Tenancy succession**

- Usually there can only be one succession to an assured or an assured shorthold tenancy, unless the tenancy agreement allows for further successions.

- **Periodic or fixed term tenancies longer than 2 years**

- tenant's spouse, civil partner or cohabitee can succeed to the tenancy if they were occupying the dwelling as their only or principal home at the time of the tenant's death. Another family member can succeed if the tenancy agreement allows for it.

- **Fixed term tenancies shorter than 2 years**

- There is no right to succession to a sole fixed term assured tenancy of less than two years.

Ending the Tenancy and no-one can succeed

- The tenancy continues until it is ended in the normal manner.
- Therefore, a landlord is required to serve a notice before proceedings for possession can be started.
- A personal representative of the deceased tenant who wishes to end the tenancy must give the notice required by the tenancy agreement. In practice where no one wants to remain in the property, the tenancy is often terminated by mutual consent.

Possession proceedings against occupier

- In most cases where possession proceedings are required when an occupier is still living in the property who is not a successor has limited protection by the Protection from Eviction Act 1977. Therefore, landlord is required to give 28 days' notice.
- A court order is required to evict a licensee (occupier). We are not covering excluded occupiers in this session as there are ways to lawfully evict without a court order once their tenancy or licence has been brought to an end.

Steps to take to end the tenancy

- 1. You should contact next of kin and request a copy of the Letters of Administration confirming who is the Executor of the estate. You should then discuss what will happen to the tenancy, and if agreed arrange a surrender of the tenancy.

Abandonment and Intestacy

- 2. If the tenant pass away without a will, the property/tenancy will vests to the tenant's personal representatives, meaning that the tenancy automatically passes on the tenant's death. The tenancy vests in according to the instructions in a will, or if there is no will, according to the rules of intestacy.

- If the tenant has passed away without a will/intestate. If there is no will, the property initially vests in the Public Trustee until such time as legal authority is obtained(also known as grant of representation). There are two types of grant of representation:

i) probate, when someone is named as a executor in a will

ii) letter of administration, where there is no will or the will is not valid, or if the named executor is unable or unwilling to act.

Both of these grants are issued by the Probate Registry.

- **If your tenant dies without an executor or a will and there is no legal authority.**
- As aforementioned the tenancy is transferred temporarily to the Public Trustee if a tenant dies. You cannot take back a property automatically even if the tenancy was due to end.

To reclaim your property or seek possession, you need to :

1. Post or deliver a letter to the tenant's last known address saying you're giving written notice
2. Pay a fee to register a written notice with the Public Trustee
3. Submit a NL1 Form online to register your written notice

- **The written notice**

-Address the written notice to “The Personal Representative of [full name of the tenant who died) of [last known address for the tenant who died].

-It is important to note that if you do not address the written notice in this way, your application could be rejected.

- **Apply to register the written notice**

- A payment of £40 is required for registration fee. This could be found on Gov website- Pay to register a notice with the Public Trustee

- when you have paid the fee and got payment reference number, you can apply to register the notice with a NL1 form. You will need:

- i) the payment reference number
- li) an electronic copy of the written notice

If you cannot use the online payment service of the application form send an email to the Public Trustee to find out how you can apply in a different way.

The Public Trustee email found on Gov website:

todenquiries@ospt.gov.uk

Get a decision about your application

The Public Trustee will register or reject your application. You should get their decision within 15 working days of sending your application and payment, but it can take longer.

If your application is registered you will be told the date it was put in the register.

If your application is rejected, for example because it's incomplete, you'll be told why the Public Trustee cannot register it.

- Once the notice has been accepted the landlord will need to start possession proceedings.
- The main Ground for Possession will be under Ground 7: Death of a Tenant
- The Court must order possession on Ground 7 where both:
 - i) The tenancy has passed on by will or intestacy rules after the death of the tenant; and
 - ii) The landlord started possession proceedings no later than 12 months after the death of the tenant or, if the court directs, the date the landlord became aware of the death.

Possession proceedings means issuing a possession claim in the County Court.