



DEATH IN A UNIT:

Managing the tragedy of a tenant passing away in the rental unit

By Daniel Bornstein, Esq.

Having a death occur in a rental unit is always a traumatic experience for landlords. Most of the experiences we have encountered are natural deaths. Yet with a raging drug addiction problem with fentanyl becoming the deadliest killer, it can become even more traumatic.

Discovering a tenant slumped over a toilet who passed away from an overdose or a landlord who hired a contractor to make agreed-upon repairs, only to find the tenant lifeless on the kitchen floor. Worse yet, a homicide or a meth-induced suicide occurs in the rental unit. We will spare you many horror stories that we hope and pray you will never encounter.

Some rental property owners have had to seek mental health counseling after making a horrid discovery.

When a tenant expires, there is a host of rights and responsibilities on the part of the property owner and we'll give a cursory glimpse into them here.

Landlords need to get out of the way

When someone passes, it should go without saying that the first action is to call 911. The landlord or their agent should not tamper with anything but let authorities do their job. If a coroner is tasked with an investigation, they are in total control of the rental unit and the tenant's possessions.

We are reminded of a Law & Order episode when Detective Joe Fontana was approached by the owner of a hotel where there was a homicide and was asked how long the commotion of the investigation would take, to which the detective snarkily responded that it will be as long as it takes and if the hotel owner obstructed, there would be police tape sealed around the entire hotel, and "that would be really bad for business."

Point is, the rental unit may be held hostage for a while as authorities conduct their work. If the death occurs as a result of a homicide, it could take weeks or even months.

Notifying the next of kin can be a thankless task, but one that may be necessary.

Ideally, the landlord has emergency contact information listed in the rental application, but many times the contact information of relatives is not available.

If relatives cannot be identified, the police or coroner will be able to facilitate. If, however, there is homicide or suicide, they will normally handle this task on their own.

Being careful of whom you deal with

After a tenant passes, there may be many relatives and others who want to gain access to the property, if only to pick up a sentimental photo or attempt to take something of monetary value. Add in feuding heirs and communications with multiple people and this can spiral out of control quickly.

What we would like is to have a single point of communication with one person, and that is the trustee or the executor who is appointed by the court to wind down the earthly affairs of the deceased. This "go-to" person should produce documentation that proves that they have the authority to settle the estate.

What we don't want is multiple people clamoring to get into the rental unit, so we recommend a policy of changing locks after official clearance and not entertaining requests from anyone else except the decision maker who is legally entitled to dispose of the estate's assets and the decedent's personal belongings.

Probate and trust matters are not our wheelhouse and go beyond the scope of this article, but the quintessential point is that landlords do not want to get mired in family affairs and let people into the unit to pick up items no matter what the justification. With proper credentials, we want the trustee, executor, or administrator to be the only party involved.

There are many rules related to how belongings are disposed of but rest assured, it is not finders keepers.

While we often find that many relatives come out of the woodwork to claim a right to possessions, perhaps this is not true. This decision is not one that landlords can make but is up to the one appointed with the authority to settle the estate.

Or, perhaps, the family takes what they want and there are items left behind. The landlord must comply with the rules surrounding the abandonment of property spelled out in [California Civil Code – CIV § 1951.3](#).

When family members take items, what we would like to see is a written receipt for the possessions they removed. If any possessions are moved to storage, they should be documented. The landlord should be a good custodian of any possessions that have been left in the unit and we do not want to deal with any allegations that somehow a diamond ring or something else vanished.

Professional cleaning

When someone passes, it might not be a typical cleaning up, and a biohazard specialist may be needed. Depending on the nature of the death, flooring, and putrefaction, this can be costly. Depending on the nature of death and the time that has elapsed since the body is found, it can be in the thousands of dollars. The last bill that came across our desk was \$4,800.

Getting a copy of the death certificate

This can be obtained by family members but sometimes they are overwhelmed or uncooperative, in which case the court can be petitioned to obtain it.

Disclosure of death

A rental property owner or their agent is not required to disclose to a buyer or a tenant that there was a death or divulge the manner of death when the passing occurred more than three years prior to the date of the transfer or the rental of the property. Also, if the deceased tenant perished due to an HIV or AIDS-related complication, the landlord is not bound to disclose the cause or even the death at all. However, Bornstein Law advises clients not to make any misrepresentations when asked.

What about the rent owed?

When a tenant is on a month-to-month tenancy and they die, the tenancy is terminated upon the landlord becoming aware of the death.

If, however, the tenant is in a fixed-term lease, the estate is technically responsible for the rent due. The death of the tenant, then, should be treated in the same way as a broken lease.

Under Cal. Civ. Code § 1951.2, landlords must take proactive steps to mitigate the damages caused by the death. In layperson terms, this means that when the landlord is out of money because a tenant died, they will need to make efforts to re-rent the unit and get cash flowing again. If there is no reasonable, good-faith effort to mitigate the damages the landlord suffered, then the landlord is hard-pressed to recover any losses which could have been avoided.

Although the estate is liable for unpaid rent amounts as long as the landlord has fulfilled their obligation to mitigate, the family and heirs are not personally liable if the estate does not have enough money to pay all claims. It's not uncommon that there is simply no liquidity.

Security deposits

If there is unpaid rent, the landlord is entitled to deduct it from the security deposit. Another permissible reason to deduct from the security deposit is to pay for cleaning expenses necessary to re-rent the unit. When there is a death, cleaning costs can easily exceed the amount of the security deposit.

For any security deposit due to the estate, a check should be made out to "the estate of deceased's name." The landlord should send the accounting as the law requires, and might have to file a claim in probate if no agreement for payment is reached with the late tenant's estate.

Family members and others who linger in the rental unit after the tenant has passed

Hopefully, you have heeded the advice of changing locks and dealing only with the trustee or executor of the estate, but we find that when someone died, there are family members who will camp out in the rental unit, or at least try to.

We'll have to ascertain what their legal status is. Are they a trespasser? Are they a subtenant that has paid rent to the late master tenant? Or is the remaining occupant merely a licensee given limited permission to stay in the unit?

Bornstein Law can ascertain the answers to these questions, determine what rights are afforded to individuals still residing in the unit, and advise accordingly. If there is a master tenant that has died and there are subtenants who are remaining, sometimes our office can raise the rent under Costa-Hawkins.

When there is a family member, caregiver, or another guest who is living in the rental unit of the deceased, Bornstein Law can pursue a forcible detainer action if no tenancy was established.

Parting thoughts

Death is one part of the circle of life and is inevitable. Just as unavoidable for landlords is having tenants pass. There is a life cycle in tenancies, be it the inception of the rental relationship, a renewal of the lease, tenants moving out, eviction of tenants, swapping of roommates, and so forth.

Aside from these typical events landlords are accustomed to, we also need to prepare for the possibility that the rental relationship is severed because the tenant dies. Rental housing providers should be familiar with their rights and responsibilities when this unfortunate event occurs and, with proper counsel, get their rental business back to normal as soon as possible with the least complications.

ABOUT DANIEL BORNSTEIN

More than a practitioner in landlord-tenant law, Daniel Bornstein is the Broker of Record for Bay Property Group, a property management company that protects and optimizes the investments of landlords. He is also renowned for his educational seminars and is called upon as an expert witness in complex real estate litigation matters. To avoid or resolve friction within rental units and cauterize risk, Daniel is happy to dispense informed advice to owners, property managers, and other real estate professionals looking to survive and thrive in today's challenging and litigious rental housing market. Call 415-409-7611 or email daniel@bornstein.law.