

RESIDENTIAL REAL ESTATE CONFERENCE 2025

PAPER 4.1

When a Tenant Passes Away – Obligations of Residential Landlords

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WHEN A TENANT PASSES AWAY – OBLIGATIONS OF RESIDENTIAL LANDLORDS

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Dealing with the unfortunate circumstances of a tenant passing away is a common experience for residential landlords. There is only general guidance published by the Residential Tenancy Branch of British Columbia (“RTB”) educating landlords about the specific steps they should take to deal with this issue. Decisions published by the RTB can be inconsistent and they are typically of no precedential value, and there are almost no B.C. Supreme Court decisions on point.² You may be asked to provide advice and direction to your residential landlord clients. This paper is intended to assist you with identifying issues arising under the *Residential Tenancy Act* (“RTA”) that your client may have to address.

When a tenant passes away, it creates two discrete issues for the landlord. One issue relates to the residential tenancy agreement and the tenancy relationship between the landlord and the estate of the deceased tenant. The other issue relates to the deceased tenant’s personal property; in particular, dealing with abandoned property belonging to the estate of a deceased tenant.

I. Issue One: The Tenancy Agreement and the Tenancy Relationship

When a tenant passes away, the tenancy is not “frustrated”, and the tenancy is not automatically abandoned or terminated either. The definition of a “tenant” set out at section 1 of the RTA specifically “includes the estate of a deceased tenant.”³ Although not clearly explained in any policy guideline, the RTB’s position is that when a tenant passes away, the administrator or

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2 See section 64(2) of the RTA which provides that an arbitrator “is not bound to follow other decisions” made by other arbitrators under Part 5 of the RTA.

3 RTA section 1, definition of “tenant”.

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executor of the tenant's estate becomes responsible for the tenancy.⁴ In other words, the tenancy is now with the estate of the deceased tenant and the tenancy agreement otherwise continues on the same terms.

The fact the tenancy continues on the same terms means that a landlord must continue to serve notices on the estate of the deceased tenant for breaches of the tenancy agreement. Similarly, the executor of the tenant's estate can serve notices on the landlord, such as a one month notice to vacate.

For example, if rent is unpaid, then the landlord may serve a notice to end tenancy for unpaid rent. The landlord is supposed to serve the personal representative⁵ of the deceased tenant.⁶ The personal representative, in their capacity as executor or administrator of the deceased tenant's estate, is properly named as the tenant in any such notice.⁷

Because the landlord is now supposed to serve the estate's personal representative, it is probably insufficient to simply post such a notice on the door of the rental unit, or to mail it by registered mail to the rental unit, like one would with a typical tenancy. A notice served by being posted on a door, or by being sent by mail, must be posted to the door or mailed to "the address at which the person resides".⁸

This means a landlord must take a different approach to the matter. The landlord must identify who the personal representative is and attempting service on that person, instead of simply serving notices to the rental unit as though the deceased tenant were still alive. If necessary, including if the landlord is uncertain as to whom the personal representative is, then the landlord may have to apply under section 71 of the RTA for a substituted service order permitting service by other means.⁹

One of the first things a landlord must do is try to identify the personal representative so that the landlord can continue to administer the tenancy agreement. The personal representative is the estate's representative, authorized to deal with its property. Ideally, this person is easily found, and the landlord and personal representative will work together cooperatively to formally end the tenancy and have the rental unit vacated.

However, it is frequently the case that identifying the personal representative is challenging. For example, sometimes there is no executor and there is no will, and no family member prepared or able to identify themselves as a personal representative. In these circumstances, a landlord

4 See comments from the RTB on this issue, e.g., <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/special-circumstances#death>

5 As defined by section 29 of the Interpretation Act – includes either the executor, or the administrator, if there was no will.

6 Policy Guideline 43 – Naming Parties.

7 Policy Guideline 12 – Service Provisions.

8 RTA section 88.

9 RTA section 71.

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should exercise caution. If unsure, access shouldn't be provided simply because a family member has requested access.

Just as a landlord would not allow access to a tenant's rental unit by a third party, even a family member, simply because that person asked, a landlord should be careful granting access to the rental unit unless satisfied that it is being accessed by someone with authorization to access the home. It's reasonable for a landlord to require evidence that this person is authorized to deal with the tenant's estate.

In rare cases, a family member tries to live at the rental unit, or an occupant (not a tenant under the tenancy agreement) tries to stay. Just as a living tenant cannot assign or sublet their tenancy agreement except where permitted under the RTA, an estate cannot permit someone else to live at the rental unit either. There is no policy guideline or court decision explaining how to navigate this issue and the foregoing conclusion is based upon the author's interpretation of the RTA and the fact that the terms of the tenancy agreement (including prohibitions against sublet and assignment without landlord consent) remain unchanged after a tenant has passed away.

Generally speaking, if a family member or someone else moves into a rental unit after the tenant passed away, then the landlord may treat these circumstances as an unauthorized sublet or assignment, even if that person says that they had, or would have had, the deceased tenant's permission. After all, those circumstances indicate that the estate of the deceased tenant has given a right of exclusive occupation to that person, consistent with a sublet or assignment.¹⁰ A sublet or assignment requires permission from the landlord, which can be outright refused if the tenancy is month to month, or a fixed term with 6 months or less remaining in the term.¹¹

Having said that, caution should be exercised in accepting rent from the non-tenant occupant. It could be seen as creating a new tenancy agreement with that person.¹² For example, if a tenant passed away, and that tenant's family member moved in and starting paying rent to the landlord for the right to live at the home, those circumstances could be seen as creating a new tenancy relationship between the landlord and the new occupant.¹³ The landlord will be unable to end the tenancy except where permitted under the RTA. If the landlord wants to accept rent, then it should be done and documented carefully, with written confirmation of the surrounding circumstances of why this person is paying money to the landlord, and confirmation by both parties that it is not intended to create a tenancy relationship between them or a right to a license to occupy the rental unit.

When a tenant passes away and if there is a co-tenant who lived with them under a joint tenancy agreement (as opposed to separate tenancies of the same living space), as a practical matter, the landlord and surviving tenant frequently choose to continue the tenancy relationship,

10 Policy Guideline 19 – Assignment and Sublet.

11 RTA section 34.

12 Policy guideline 9 – Tenancy Agreements and Licences to Occupy, Section B. Tenancy Agreements.

13 Policy guideline

unchanged. The parties decide that the remaining tenant continues the tenancy relationship with the landlord.

However, there is no law under the RTA, or policy guideline, that explains what exactly has happened between the landlord and the tenants – i.e., whether the tenancy continues with the remaining living tenant akin to a right of survivorship, or if it remains a co-tenancy between the living tenant and the estate of the deceased tenant. Given that:

1. the RTB's position is that a tenancy continues with the deceased tenant's estate;
2. the RTA prescribes all ways a tenancy ends, and the death of a tenant is not a way a tenancy ends; and
3. the RTB's position on the rights and responsibilities of co-tenants, including that a co-tenant must give notice to the landlord to end their tenancy,¹⁴

this indicates that a reasonable interpretation of the legislation may be that the tenancy continues with the living tenant and the estate of the deceased tenant, until the tenancy is ended in a manner permitted under the RTA.

II. Issue Two: Dealing with Abandoned Property

It is also frequently the case that no one with authorization to deal with the tenant's estate will step up for the estate to deal with the estate's affairs. Perhaps no one will even contact the landlord. This relates to the second issue a landlord may have to address – dealing with abandoned property. The RTB provides general guidance to landlords through its website.¹⁵ As will be discussed, there is very little case law on point.

Abandonment of personal property is addressed under Part 5 of the Regulation to the RTA. The first question is whether the rental unit is truly "abandoned". Section 30.3 of the RTA provides that a landlord may consider a rental unit abandoned in these circumstances:

Abandonment of personal property

30.3 (1)A landlord may consider that a tenant has abandoned personal property if

- (a)the tenant leaves the personal property on residential property that the tenant has vacated after the tenancy agreement has ended, or
- (b)subject to subsection (2), the tenant leaves the personal property on residential property
 - (i)that, for a continuous period of one month, the tenant has not ordinarily occupied and for which the tenant has not paid rent, or
 - (ii)from which the tenant has removed substantially all of the tenant's personal property.

14 Policy Guideline 13 – Rights and Responsibilities of Co-tenants.

15 See e.g., <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/moving-out-of-rental-units/items-left-behind>

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(2)The landlord is entitled to consider the circumstances described in subsection (1) (b) as abandonment only if

- (a)the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
- (b)the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

As mentioned, simply because a tenant has passed away does not mean that the tenancy agreement has ended. It continues through the tenant's estate. This means that a landlord will have to rely upon section 30.3(1)(b)(i) as a basis to conclude that the rental unit and its property have been abandoned.

Section 30.3(1)(b)(i) is interpreted subject to section 30.3(2). This means the landlord will either have to receive an express oral or written notice from someone authorized to act on behalf of the tenant's estate that the rental unit and personal property left behind are abandoned; or failing that, the landlord will have to make a reasonable judgment call, based on all of the surrounding circumstances.

Your client will appreciate your legal advice and guidance dealing with this issue of confirming whether or not the tenancy is truly abandoned. Depending on the facts and surrounding circumstances, it could be complicated. Sometimes, third parties who might have an interest in the tenant's property are prepared to provide letters confirming they abandoned any claim to it, which could be of assistance to your landlord client.

Under the common law, landlords have very few obligations regarding abandoned property and may be seen as involuntary bailees of that property. For the time period from when a tenancy has ended, but before the tenant's personal property is considered abandoned, a residential landlord may owe common law bailment obligations to the tenant.¹⁶ But after abandonment has occurred, a statutory process takes over, as described below.

Under the RTA, residential landlords in British Columbia have significant obligations and in fact, owe a duty of care, set out at section 30.4 of the Regulation to the RTA:

Landlord's duty of care and obligations

30.4 When dealing with a tenant's abandoned personal property, the landlord must

- (a)exercise reasonable care and caution required by the nature of the abandoned personal property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage,
- (b)unless otherwise provided under this Part, store the abandoned personal property in a safe place and manner for a period of not less than 30 days,
- (c)keep a written inventory of the abandoned personal property for a period of 2 years from the date of disposition of the abandoned personal property,

16 *Fok v. British Columbia (Residential Tenancy Dispute Resolution Officer)*, 2010 BCSC 1613 at para. 77.

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(d) carry out any disposition of the abandoned personal property in accordance with this Part,

(e) keep particulars of the disposition of the abandoned personal property for a period of 2 years from the date of disposition of the abandoned personal property, and

(f) upon request, advise the tenant whether the abandoned personal property has been removed, stored or disposed of.

Once the landlord has determined the tenancy to be abandoned, the landlord must ensure that abandoned property does not deteriorate and is not damaged, lost or stolen, and the property must be stored in a safe place for at least 30 days before it is disposed of. In fact, if the property has a market value in excess of \$1,000, the landlord must try to dispose of it in a “commercially reasonable manner” (usually, try to sell it for a reasonable amount).

At any time prior to disposing of the abandoned property, the tenant may claim the abandoned property. But the landlord is entitled to refrain from returning it until it has been reimbursed for the landlord’s reasonable costs of removing and storing the property, and satisfying any amounts that were owing under the tenancy agreement.¹⁷

The landlord must publish a notice of disposition in a local newspaper, identifying the abandoned property that will be disposed of, as well as give a notice to anyone who, to the landlord’s knowledge, might claim an interest in the property.¹⁸ Additionally, the landlord must conduct searches for financing statements registered under the *Personal Property Security Act* and give notice of the intention to dispose of abandoned property to secured creditors.¹⁹ However, a secured creditor must pay the landlord’s moving and storage charges incurred by the landlord before taking possession of any collateral secured by the secured creditor’s security interest.²⁰

If a landlord realizes cash proceeds from the sale of abandoned property, the landlord can apply the proceeds against its actual out of pocket costs and amounts owing under the tenancy agreement, but any remaining amount must be paid to the administrator under the Unclaimed Property Act.²¹ A purchaser of abandoned personal property acquires clear title to it once payment of “taxes owing in relation to the abandoned personal property or sale” are paid.²²

A landlord has no obligation to store and try to sell abandoned property that:

1. would be unsanitary or unsafe to store;
2. that has a value of less than \$1,000; or

17 Section 30.5 of the Regulation to the RTA.

18 Section 30.6(2) of the Regulation to the RTA.

19 Section 30.6(2) of the Regulation to the RTA.

20 Section 30.7 of the Regulation to the RTA.

21 Section 30.92 and 30.93 of the Regulation to the RTA.

22 Section 30.93(3) of the Regulation to the RTA.

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3. where the total cost of removing, storing, and selling the abandoned personal property would be more than the proceeds of the sale of the property.²³

There is little case authority or guidance discussing these concepts. It will require a reasonable judgment call by your client backed by objective evidence. For example, it is prudent to have a third-party professional provide a written valuation confirming the value of the property as being less than \$1,000 before disposing of the property under section 30.8. This shows the landlord relied on an objective opinion from a third-party further to its decision to dispose of the abandoned property.

Some personal property, like motor vehicles, have ownership registered in government registry. Like any personal property, this property is treated the same way when abandoned. However, you will have to consider what formalities the registry in question requires to accept that the property in question is being disposed of in accordance with the abandonment provisions of the RTA. For example, in addition to complying with the requirements of the RTA, a landlord may have to satisfy additional requirements under the *Motor Vehicle Act* to dispose of an abandoned motor vehicle.²⁴

Earlier this year, the Province revised the abandonment laws to make them more stringent on landlords. In particular, they created a new class of abandoned property called “personal value property”, which is defined as:

“personal value property” means the following items of abandoned personal property:

- (a) medical equipment;
- (b) photographs in paper form that are framed or otherwise demonstrative of having personal value;
- (c) specific property identified as having personal value as described in section 30.3 (5);

(...)

Abandonment of personal property

30.3 (5) The tenant may provide express written notice to the landlord of specific and identifiable property that has personal value and, if the landlord has not removed that property as of the receipt of the notice, the landlord must deal with that property as personal value property in accordance with this Part.

Special rules apply to personal value property. The primary difference is that these items must be stored for 30 days even if they have a market value of less than \$1,000.²⁵ They cannot be

23 Section 30.8 of the Regulation to the RTA.

24 See e.g., <https://www.icbc.com/vehicle-registration/sell-vehicle/Repossess-or-seize-a-vehicle>

25 Section 30.91(2) of the Regulation to the RTA.

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summarily disposed of under section 30.8.²⁶ A landlord does not have to store personal value property if it reasonably believes it would be unsanitary or unsafe to do so.²⁷

In other words, medical equipment, family photographs, and property the tenant advises is personal value property cannot be summarily disposed of unless storing them would be unsanitary or unsafe. Nor can any personal property be summarily trashed if a tenant gave notice to the landlord that it was personal value property. Under the new law, a tenant can designate any personal property as personal value property. When this happens, the landlord must store the property for at least 30 days before disposing of it, giving an additional opportunity for this property to be claimed. Landlords operating large residential real estate investments must train their property managers to be aware of personal value property and not summarily destroy a deceased tenant's personal property.

Case law dealing with abandoned property under the Residential Tenancy Act

Section 30.2 of the Regulation of the RTA provides for disputes regarding the value of abandoned property or the rights of people claiming interests in it to be resolved by the B.C. Supreme Court by application. There appear to be no reported decisions involving such applications, and very few case authorities dealing with the subject matter generally. Cases dealing with abandonment in the context of residential tenancies deal with judicial reviews of RTB arbitration decisions, or small claims actions, concerning whether a tenant actually abandoned their tenancy or not, or compensation for goods wrongfully disposed of as abandoned, rather than disputes involving disputed claims to abandoned property resolved under section 30.2.²⁸

26 Section 30.91 of the Regulation to the RTA.

27 Section 30.91(3) of the Regulation to the RTA.

28 See e.g., *Bello v. Ren*, [2009] BCJ No 2323 (SC) (Tenant away for three to five days due to an emergency hospitalization is not a reasonable basis to conclude the tenancy was abandoned – note also, the discussion of the interplay between common law bailment obligations and the statutory scheme for abandoned property set out in the RTA at paras. 15-17 explaining how bailment obligations may still exist outside of the statutory scheme).