

If the tenant dies, who can continue with the rental agreement?

The tenant's death does not necessarily mean that the rental agreement automatically terminates. In certain circumstances, some family members or people who lived with the tenant may take their place under the agreement and continue living in the property.

This is legally known as **subrogation under the rental agreement following the tenant's death**.

However, not every family member or heir can benefit from this possibility. **Law 29/1994 of 24 November on Urban Leases (LAU)** establishes who may take over the tenancy, which requirements must be met and, especially, the deadline for notifying the landlord.

DOES THE TENANT'S DEATH TERMINATE THE RENTAL AGREEMENT?

Not necessarily.

Article 16 of the LAU allows certain people connected to the deceased tenant to continue under the agreement. This means that the person who meets the legal requirements takes the tenant's place and assumes the rights and obligations arising from the agreement.

Therefore, this does not involve entering into a new rental agreement, but rather **continuing the existing agreement through subrogation**. If, however, there is no one entitled to take over the tenancy, Article 16 itself provides that the lease terminates.

WHO CAN STAY IN THE FLAT AFTER THE TENANT'S DEATH?

The LAU establishes a specific group of people who may be entitled to continue under the agreement.

Firstly, **the tenant's spouse** may take over the tenancy, provided they were living with the tenant at the time of death.

A person who had lived permanently with the tenant in a relationship analogous to marriage for at least **two years before the death** may also do so. If the couple had children together, it is sufficient that they were living together.

The law also covers the tenant's **descendants**. They may take over the tenancy, among other circumstances provided for by law, if they were subject to the tenant's parental authority or guardianship at the time of death, or if they had habitually lived with the tenant during the previous two years.

The tenant's **ascendants** and **siblings** who had habitually lived with the tenant during the two years preceding the death may also have this right. Finally, the LAU covers certain collateral relatives up to the third degree with a disability rating of 65% or more, provided that the legally established cohabitation requirement is also met.

DOES BEING AN HEIR MEAN BEING ENTITLED TO CONTINUE THE TENANCY?

No.

Being someone's heir does not, in itself, give a person the right to take over their rental agreement. Tenancy subrogation is subject to the specific requirements of Article 16 of the LAU.

For example, a person may have been named as an heir in a will but may not have lived with the deceased or fall within any of the circumstances provided for by law. In this case, simply being an heir does not automatically allow them to continue occupying the property as a tenant.

WHAT HAPPENS IF SEVERAL PEOPLE WANT TO TAKE OVER THE TENANCY?

Several people may meet the legal requirements, for example, different members of the same family. Ideally, they should reach an agreement on who will continue as the tenant. If there is no unanimous agreement, Article 16.2 of the LAU establishes an **order of preference** to determine who has priority.

The order of priority is as follows: first, the spouse; then, the partner who meets the legal cohabitation requirements; next, descendants subject to the tenant's parental authority or who had habitually lived with the tenant during the previous two years, ascendants who had habitually lived with the tenant during the two years preceding their death, siblings who had habitually lived with the tenant during the two years preceding their death and, finally, other collateral relatives up to the third degree who meet the disability and cohabitation requirements established by law. There is an important exception to this order: **parents aged seventy or over take priority over descendants**, provided that they also meet the requirements to take over the tenancy.

How is priority determined within the same group?

When there are several people within the same group, the law specifies how the situation must be resolved. Among descendants and among ascendants, the closest relative by degree takes priority: for example, a child over a grandchild or a parent over a grandparent. Among siblings, a full sibling takes priority over a half-sibling.

If there is still a tie, preference is given to the person with a disability rating of 65% or more. If this circumstance does not apply, priority is given to the person with the greatest family responsibilities and, ultimately, to the youngest descendant, the oldest ascendant or the youngest sibling.

It should also be borne in mind that the landlord may dispute whether the person who has notified them of the subrogation actually meets the legal requirements (for example, if they question the previous cohabitation). In these cases, the disagreement is not resolved automatically: evidence of cohabitation or kinship will need to be provided and, if no agreement is reached, the matter may ultimately be decided by the courts.

Therefore, when there are several potential beneficiaries, or when the relationship with the deceased tenant is not evident, it is advisable to analyse the specific case and document it thoroughly before giving notice of the subrogation.

THE THREE-MONTH DEADLINE IS ESPECIALLY IMPORTANT

One of the most relevant aspects of subrogation is the deadline for giving notice. Article 16.3 of the LAU establishes that, within **three months following the tenant's death**, the landlord must receive written notification of the death and the identity of the person wishing to take over the tenancy.

For example, if the tenant dies on 1 January, the notification must reach the landlord by 31 March at the latest, to avoid reaching the deadline. This is a civil-law time limit and, therefore, **every day of the year counts**, including Saturdays, Sundays and public holidays.

The notification must be accompanied by the **death certificate**, state the relationship to the deceased and provide evidence of the relationship or disability being claimed.

If this notification is not given within the established time limit, **the rental agreement terminates**. For this reason, following the tenant's death, it is important not to let time pass assuming that the agreement will automatically transfer to family members.

DOES THE AGREEMENT CONTINUE UNDER THE SAME CONDITIONS?

When subrogation takes place correctly, the beneficiary takes the deceased tenant's place. This generally means that **no new agreement is created**; instead, the existing agreement continues, with the rights and obligations arising from it, for the remainder of its term.

The explanatory memorandum to the LAU itself explains that the right of the person taking over the tenancy to continue using the property remains in place until the end of the contractual term.

CAN THE AGREEMENT EXCLUDE THE RIGHT TO TAKE OVER THE TENANCY?

In some cases, yes.

Article 16.4 of the LAU allows the parties to agree on certain restrictions on subrogation following the tenant's death in agreements with an initial term exceeding **five years, or seven years when the landlord is a legal entity**.

For example, in agreements lasting more than five years when the landlord is an individual, or seven years when the landlord is a legal entity, the parties may agree that **there will be no right to take over the tenancy if the death occurs after the first five or seven years**, as applicable.

However, the law itself introduces a specific safeguard: this waiver cannot be agreed upon when the people who could take over the tenancy are in a situation of particular vulnerability and it affects minors, people with disabilities or people over the age of 65.

This is one of the reasons why it is important to review both the legislation and the terms of the agreement before assuming that the tenancy continues or terminates.

WHAT HAPPENS IF THERE IS NO RIGHT TO TAKE OVER THE TENANCY?

When no one is entitled to take over the tenancy, or when everyone waives that right, the agreement terminates and the landlord regains control of the property.

In this situation, those living in or occupying the property must hand over the keys and vacate it. Regarding the deposit, the heirs may claim its return provided there is no outstanding rent or damage to the property, in accordance with Article 36 of the LAU; otherwise, the landlord may deduct the corresponding amounts from the deposit before returning it. The heirs are also liable for rent accrued and unpaid until the agreement effectively terminates, as well as for any damage to the property.

If the occupants do not leave voluntarily once the agreement has terminated, the landlord may need to bring eviction proceedings on the grounds of occupation without legal title or expiry of the contractual term to recover possession.

WHAT IF IT IS A BUSINESS PREMISES?

The rules differ from those applicable to a main residence.

For leases of premises where a business or professional activity is carried out, Article 33 of the LAU establishes that the **heir or legatee who continues carrying out the activity** may take over the tenant's rights and obligations until the agreement terminates.

In this case, the landlord must be notified of the subrogation in writing within **two months following the death**.

Therefore, the rules applicable to a main residence should not be confused with those governing commercial or professional premises.

WHAT SHOULD YOU DO IF THE TENANT OF A RESIDENTIAL PROPERTY DIES?

Following a death, it is advisable to first review the rental agreement and determine whether anyone meets the requirements established by the LAU to take over the tenancy.

It is also essential to check who has priority if there are several potential beneficiaries and, above all, to **notify the landlord of the subrogation within the legal three-month deadline**, providing the necessary documentation.

The tenant's death, therefore, does not automatically mean that the property must be vacated, but neither does it allow any family member or heir to continue under the agreement. Each situation will depend on the relationship with the tenant, previous cohabitation, the type and duration of the agreement, and compliance with the deadlines established by law. If you find yourself in this situation, the most advisable first step is to review the agreement and the three-month deadline and, if the case raises any doubts (several potential beneficiaries, exclusion clauses or disagreement with the landlord), consult a professional before the deadline expires.