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When a Rent-Controlled Tenant Dies

By JAY ROMANO

Q. An apartment I own in New York City was occupied by one rent-controlled tenant, who died in March. Can the estate be required to pay market rent from the time of the tenant's death until the apartment is vacated?

A. Jamie Heiberger-Jacobsen, a Manhattan landlord-tenant lawyer, said that since a rent-controlled tenant typically does not have a lease, the tenancy in question was probably a month-to-month tenancy that expired at the end of the month in which the tenant died.

And legally, Ms. Heiberger-Jacobsen said, the owner of the apartment would be entitled to demand a fair market rent from the estate from the beginning of the next month.

But, she said, under state law, no action to recover possession of an apartment can be brought until an executor or administrator of an estate is appointed - or until after a 90-day cooling-off period - whichever is sooner. At that point, she said, a landlord could start a proceeding against the estate to recover possession of the apartment and demand a fair market rent for the period after the tenant's death. But the amount the estate would be liable for would ultimately be up to the court.

Because of a 1995 Manhattan Surrogate's Court decision, Ms. Heiberger-Jacobsen said, "to determine this rate, courts consider such things as the nature of the use, whether the apartment was held for an unreasonable length of time and the conduct of the parties."

She added that in the case of a deceased tenant who had a lease - including rent-stabilized tenants - an estate has the right to keep the apartment at the lease rent until the lease expires. But it does not have the right to occupy or sublease the apartment, or to receive a renewal lease.

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