



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPC, MNR, MT, CNC, FF

### Introduction

In the first application, the “landlords” Mr. W.S. and Mr. J.M. apply against the respondent “tenant” J.C. for an order of possession pursuant to a one month Notice to End Tenancy dated June 6, 2015 and for a monetary award of \$350.00 for October 2015 rent.

The respondent J.C. passed away on August 14, 2015.

The “tenant” applicant Ms. G.B. is the late J.C.’s daughter. It appears she is the owner of the manufactured home (the “home”) located on the manufactured home site in question (the “site”).

Ms. G.B. applies to cancel the one month Notice to End Tenancy and for more time to do so.

The persons listed on the cover page of this decision as having attended the hearing were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities who the landlord(s) is and who the tenant(s) is? Does it show that the tenancy has ended or that rent money is owed, and if so, by whom?

### Background and Evidence

The site is located in a manufactured home park. There is a written tenancy agreement dated in February 2011 showing that the tenancy started in April 2011 with Ms. S.S., (the respondent in the tenant’s application) as the sole landlord and the late J.C. as the sole tenant, for a fixed term of five years to April 30, 2016.

Mr. J.M. who attended the hearing is one of a family that owns the park. The relationship Mr. W.S. and Ms. S.S. have to the family or the park was not explained. It was not alleged that Ms. S.S. was acting as anyone's agent when she signed the tenancy agreement as "landlord."

The rent was originally \$350.00 per month, increasing to \$400.00 in the second and following years of the fixed term, however, Mr. W.S. states that it remained at \$350.00 and was never increased in accordance with the tenancy agreement.

In February 2014, Mr. J.C., the late J.C.'s son and Ms. G.B.'s brother, moved in with his mother to care for her. Mr. W.S. says Mr. J.C. was added as a tenant at that time and points to an amendment to the tenancy agreement adding Mr. J.C. name as a tenant. Neither the addition nor the tenancy agreement itself was signed by Mr. J.C.

Ms. G.B. says she is the executrix named in the will of her mother, the late J.C. It appears there has been no application for grant of probate of the will, as of yet.

On June 6, 2015 Mr. W.S. issued a one month Notice to End Tenancy for cause. The Notice gave an effective date for the tenancy to end on October 1, 2015. Mr. W.S. says it was served on Mr. J.C. on that date. Ms. G.B. acknowledged that she received it on that date.

According to Mr. W.S., Mr. J.C. left the premises in mid September 2015. His sister Ms. G.B. says he left in early October. She does not know his whereabouts. He is not named in either application. He has not been served with the landlords' application. He did not attend the hearing or file any material.

Neither Mr. J.C. or Ms. G.B. applied to dispute the Notice before its effective date. Ms. G.B.'s application to dispute the Notice was brought November 24, 2015. She says that she had been trying to sell the home and that a purchase had fallen through. She needs more time to effect a sale and the resultant removal of the home from the site.

Mr. W.S. says the home is worthless and there is no reasonable prospect of sale.

### Analysis

On the undisputed evidence I find that Ms. G.B. is the lawful representative of the late Ms. J.C. Her mother's assets and affairs are in her hands by virtue of s. 102 of the *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13. I add her as a party to both applications, in her capacity as personal representative of the late J.C.

I add Ms. S.S. as a party to the landlords' application. On the evidence, she is the sole landlord of the site in question. She has been named as the landlord in Ms. G.B.'s application and so she has not been taken by surprise by the allegation.

Though Mr. W.S. for the landlord and Ms. G.B. for the estate of the tenant both say that Mr. J.C. was a lawful tenant, without the benefit of Mr. J.C. having been served with this application and as he has not signed the only tenancy agreement produced at this hearing, I make no finding in that regard.

Ms. G.B.'s application to cancel the one month Notice has not been brought within the ten day period following receipt, as required by s. 47(4) of the *Residential Tenancy Act* (the "RTA").

Section 66(3) of the *RTA* provides: "The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice."

As the time for Ms. G.B. to apply to dispute the Notice is well past its effective date of October 1, an extension of time cannot be granted no matter what the circumstances.

As a result, by operation of s. 47, the tenant (or her estate in this case) has been "conclusively deemed " to have accepted the end of the tenancy on October 1, 2015. As the tenancy has ended, the landlord, Ms. S.S. is entitled to an order of possession.

It is clear and I find that the \$350.00 rent due October 1, 2015 has not been paid. The landlord is entitled to a monetary award in that amount, plus recovery of the \$50.00 filing fee.

### Conclusion

I grant the landlord an order of possession and a monetary award against Ms. G.B. in her capacity as the personal representative of the late J.C. in the amount of \$400.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: December 22, 2015

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Residential Tenancy Branch

