

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Carew (Estate of) v. Carew*, 2026 NSSC 140

**Date:** 2026 04 28

**Docket:** SN No. 546433

**Registry:** Sydney

**Between:**

Estate of Lena Carew, a.k.a. Lena Maude Anderson Carew, a.k.a. Lena Maude  
Carew

*Complainant*

v.

Anne “Rena” Carew

*Respondent*

<p><b>DECISION ON COMPLAINT</b> <b>Overholding Tenants Act, RSNS 1989, c. 329</b></p>
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**Judge:** The Honourable Justice Scott C. Norton

**Heard:** April 28, 2026, in Sydney , Nova Scotia

**Decision:** April 28 , 2026

**Counsel:** Kelly O’Brien, for the Complainant  
Anne Carew, self-represented Respondent

**By the Court:**

**Introduction**

[1] This decision addresses a Complaint filed under the *Overholding Tenants Act*, RSNS 1989, c 329 (“OTA”), by the Estate of Lena Carew through its Personal Representative, Ronald Carew (“Estate”). The Estate is the landlord with respect to the property located at 21-23 Railroad Street, Sydney, Nova Scotia, bearing PID 15146277. Rena Carew has refused to vacate 23 Railroad Street.

[2] The Estate seeks an Order for Possession in favour of the Estate.

[3] The Complaint hearing was held on April 28, 2026. The evidence was provided by affidavit. Neither party requested leave to cross examine the affiants. The respondent, Rena Carew, advised the court that she was not contesting the Complaint but was not consenting to it and would leave it with the court to decide. At the conclusion of the hearing I found that the Complaint had been proved and granted the Order sought with reasons to follow. These are those reasons.

**Background**

[4] Lena Carew died on or about February 9, 1997, leaving a holograph (handwritten) Last Will and Testament, appointing her son, George Edward Carew, as her Executor.

[5] At the time of her death, Lena Carew was residing at her home, located on Railroad Street in Sydney, Nova Scotia. The property is a company house, or duplex, with two civic addresses in Sydney, Nova Scotia, being 21 and 23 Railroad Street (“Property”), both of which are situated on the same parcel of land and bear one Premises Identification Number (“PID”) under the *Land Registration Act*, SNS 2001, c. 6.. The late Ms. Carew was the owner of both sides of the house. At the time of Ms. Carew’s death, her son, Bernard “Bernie” Carew, was renting 23 Railroad Street from his mother and residing there with his wife, the respondent, Anne “Rena” Carew. Lena Carew was residing at 21 Railroad Street.

[6] In her holograph Last Will and Testament, Lena Carew expressed her uncertainty as to what should be done with the house after her death. She noted that “...Bernie has to have a place to live”, and left the house to George, her eldest son, to solve this problem as best he could, perhaps with the assistance of his sister,

Shirley. Lena Carew expressed her belief that George would be “tormented” for a while, but confidence that he and Shirley would “get things settled”.

[7] Upon Lena Carew’s death, George Carew handled her estate matters much in the same way Ms. Carew had handled her Last Will and Testament: informally, and within the family. George Carew did not apply for a Grant of Probate until 2025. George Carew did not collect rent from his brother, Bernie, but allowed him to continue residing at the Property. George Carew discussed the matter with his siblings and, initially, none were prepared to purchase the property from the Estate. However, after some time, George’s sister, Elaine Matheson, and her husband, Martin Matheson, decided to purchase the Property. George Carew again spoke with his siblings, and a purchase price of \$20,000.00 was agreed upon. As Lena Carew had eight heirs, it was agreed that each heir’s interest was valued at \$2,500.00. George Carew gifted his own interest to Elaine Matheson and Martin Matheson by refusing to accept \$2,500.00 from them. Elaine and Martin Matheson are understood to have paid \$2,500.00 to each of Elaine’s other siblings. Elaine obtained receipts for this payment from at least some of her siblings, including Bernard Carew, Kevin Carew, and Donna Carew (the widow of her brother, Louis Carew). Copies of these receipts were found amongst Elaine Matheson’s belongings after her death and were filed in support of the Complaint.

[8] Elaine and Martin Matheson did not receive a deed conveying the Property to them, as the matter was addressed informally. Elaine and Martin Matheson moved into 21 Railroad Street in the early 2000s. Bernie and Rena Carew continued to reside at 23 Railroad Street (Bernie Carew died in 2016 and Rena Carew continued to reside at 23 Railroad Street thereafter). The uncontradicted evidence of Ronald Carew and Daryl Matheson is that Bernie and Rena Carew did not pay rent to the Estate of Lena Carew, Martin and/or Elaine Matheson, or the Estates of Martin and/or Elaine Matheson.

[9] The status of the property became an issue after Elaine and Martin Matheson both died in 2023. The Mathesons’ son, Daryl, took responsibility for their home, initially finding an individual to occupy 21 Railroad Street periodically to keep it occupied and cover some of the expenses associated with maintaining the Property. Aside from this, Daryl and his wife, Brandy, have personally been covering the expenses associated with maintaining the Property since his parents’ death, to protect Elaine and Martin’s estates’ interest in the Property.

[10] On April 9, 2025, George Carew obtained a Grant of Probate with respect to the Estate. The Estate is not known to have any remaining assets aside from the Property. This means the Estate has no assets available to pay its debts, including the probate taxes, any commission that might be claimed by the Personal Representative, legal fees, and, most notably, any costs associated with maintaining the Property.

[11] The Estate cannot maintain the property, and if the Estate is unable to transfer or sell the Property, the Property will likely be lost as 21 Railroad Street, which is now vacant, will not be heated, maintained, or insured.

[12] As Personal Representative of the Estate, George Carew filed a Complaint under the OTA on September 2, 2025. George Carew has recently been discharged as Personal Representative of the Estate due to personal health circumstances. George's son, Ronald Carew, has been appointed as the Personal Representative in his place. He filed a new Form A Complaint on February 20, 2026.

[13] In the original Complaint of September 2, 2025, George Carew attested that acting as Executor of the Estate of Lena Carew he had sold the property to Martin and Elaine Matheson on or around 2000 - 2002.

[14] Ronald Carew understands his father opened the Estate of Lena Carew effectively to formalize and give effect to the sale that his father completed as Executor in or around 2000 - 2002. However, the matter has been complicated by the fact that Rena Carew has refused to vacate 23 Railroad Street, meaning the entire property cannot be sold.

## **Law and Analysis**

[15] The OTA defines landlord as follows:

(b) "landlord" means the lessor, owner, person giving or permitting the occupation of land, the person entitled to the possession thereof, and the heirs, assigns and legal representatives of any of them;

[16] A copy of the deed dated September 8, 1960, conveying the property to Lena Carew, has been exhibited to the Complaint filed by the Personal Representative, Ronald Carew. Ronald Carew confirmed that while his father, George Carew, sold the property to Elaine Matheson and Martin Matheson in the early 2000s, the property has not been deeded out of the Estate, as the Estate was not opened until 2025. This is confirmed by the Property Online Details Page which is exhibited to

the Complaint and shows the last deed recorded on the property is the September 8, 1960, deed, and that the owner was listed as George Edward Carew as Personal Representative upon the Estate of Lena Carew being opened in 2025. This has recently changed to show Ronald Carew as Personal Representative. The Property Online Details Page identifies the location of the property as both 21 and 23 Railroad Street. The evidence is clear that the owner of the property is the Estate and, accordingly, the Estate meets the definition of the “landlord” for the purposes of the OTA.

[17] The OTA defines tenant as follows:

(c) “tenant” includes an occupant, subtenant, under-tenant and his and their assigns and legal representatives.

[18] Anne “Rena” Carew is the occupant of 23 Railroad Street. The definition of “tenant” for the purposes of the OTA received judicial consideration in *MacLean v. MacLean*, 2003 NSSC 221. In that decision, the Honourable Justice Goodfellow considered whether the OTA, or the *Residential Tenancies Act*, RSNS 1989, c 401 (“RTA”) provided jurisdiction to address a situation where a deceased individual’s common law partner refused to vacate their home following their death.

[19] Justice Goodfellow noted that the RTA “defines ‘tenant’ and also contains a provision where a deemed ‘landlord-tenant’ relationship exists primarily as relates to the payment of rent”. Justice Goodfellow was satisfied the respondent’s occupancy was “a common-law guest arrangement founded solely on permission” and was “not based upon any contractual basis, lease, etc.” He found that the respondent was not a tenant, lessee, sub-tenant, under-tenant, deemed tenant, or occupant under the RTA.

[20] Justice Goodfellow went on to consider whether the OTA provided jurisdiction in the circumstances. He referred to the decision *Snow v. Charlesworth*, October 16<sup>th</sup>, 2000, S.C. No. 113654, for the proposition that where there is no rental arrangement or rent paid, the RTA does not apply and the landlord can proceed under the OTA.

[21] Under the OTA, where a tenant refuses to go out of possession of land held by them after their tenancy or right of occupation has expired or been determined, the landlord is entitled to file a complaint. Upon the filing of a complaint, a judge may issue a summons directed to the tenant and stating the time and place at which the complaint will be heard and determined.

[22] In this case, the summons was issued by the Honourable Justice D. Shane Russell on October 6, 2025, and was served upon Anne “Rena” Carew on October 6, 2025. The hearing was adjourned on multiple occasions, with the hearing ultimately being scheduled to proceed on April 28, 2026. The OTA provides that following the hearing, the judge may issue an order for possession in Form C to be executed on or after a day named in the order not more than 15 days after the issuance of the order, or may dismiss the complaint:

#### **Complaint by landlord**

**3 (1)** If a tenant, after his tenancy or right of occupation has expired or been determined, does not go out of possession of the land held by him, the landlord or his agent may, without any demand upon the tenant, file a complaint under oath in Form A in the Schedule to this Act, or to the like effect, with a judge having jurisdiction in the place where the land is situate.

#### **Summons to tenant**

**(2)** The judge may issue a summons, in Form B in the Schedule to this Act, directed to the tenant and stating the time and place at which the complaint will be heard and determined. R.S., c. 329, s. 3.

#### **Service of summons**

**4** A true copy of the summons and complaint shall be served on the tenant at least five days before the day appointed for the hearing, by delivering it to him personally or, if he cannot conveniently be found, by leaving it for him at his last or usual place of abode. R.S., c. 329, s. 4.

#### **Failure of tenant to appear**

**5 (1)** If the tenant does not appear at the time and place appointed for the hearing, a judge, upon proof of due service of the summons and complaint, may issue an order for possession in Form C in the Schedule to this Act.

#### **Hearing where tenant appears**

**(2)** If the tenant appears a judge shall hear the parties, and may issue an order for possession in Form C in the Schedule to this Act to be executed on or after a day named in the order not more than fifteen days after the issuance of the order, or may dismiss the complaint.

[23] In *MacLean, supra*, Justice Goodfellow confirmed that the respondent, the common law partner of the deceased, had not filed a claim in the Probate Court, nor had any action been started by her in the Supreme Court for unjust enrichment, constructive trust, or any cause of action. To the best of the Estate’s knowledge, and on the evidence before me, the same is true in the case at hand. Anne “Rena” Carew has not filed any type of claim or action claiming ownership of the property. I find

that any potential ownership claim by Anne “Rena” Carew is inconsistent with the evidence before the Court.

[24] While the Last Will and Testament of Lena Carew states “Bernie has to have a place to live”, this language does not clearly grant a right to occupy any particular property, let alone an ownership interest. This is consistent with paragraph 3 of the Affidavit of Anne “Rena” Carew, where Ms. Carew states George Carew told Ms. Carew and her husband they were to “remain” at 23 Railroad Street, while Elaine Matheson and Martin Matheson would “purchase 21 Railroad Street”. Elaine Matheson and Martin Matheson’s purchase of the house is corroborated by the receipts exhibited to the Complaint. These receipts confirm the funds were paid to purchase the “house”. They do not specify one side. Of particular note, one receipt confirms Elaine Matheson paid Bernie Carew for his interest in the property.

[25] There is no evidence to suggest Bernie Carew and/or Rena Carew ever purchased 23 Railroad Street, nor has there been any explanation as to why Elaine Matheson and Martin Matheson would be required to pay for half the property, while Bernie Carew and Rena Carew would receive the other half for free. The submitted property tax values show that in 2008, as far back as was available, the entire property had a tax assessed value of \$28,500.00. It is submitted this value is consistent with Elaine Matheson and Martin Matheson purchasing the entire property for \$20,000.00 in 2000-2002.

[26] While Anne “Rena” Carew has claimed that George Carew had “instructed that both couples were required to obtain legal counsel and obtain deeds for their respective properties”, Anne “Rena” Carew has not submitted any evidence to corroborate this and, by her own evidence, Bernie Carew “began” performing the required work, but nothing was ever completed. The property remains one, undivided building and parcel of land.

[27] Even if the language of the Last Will and Testament can be construed as providing Bernie Carew with the right to continue residing at 23 Railroad Street, any gift contained in a Last Will and Testament is contingent upon the Estate being in a position to pay its liabilities, including debts, expenses, probate taxes, legal fees, and the Personal Representative’s commission. As has been noted above, the Estate has no known assets aside from the property and, accordingly, the property must be sold to pay the above-noted expenses. The accounting filed at the time of the discharge of George Carew as Personal Representative confirms that as of that point in time, the Estate’s expenses totaled \$26,008.99.

[28] In *MacLean, supra*, Justice Goodfellow was satisfied that the owner of the property was entitled to an Order for Possession of the property. With respect to potential claims that may be advanced by the respondent, Justice Goodfellow was clear the Order would confirm it did not extinguish or affect any claim the respondent may advance.

### **Conclusion**

[29] I find that the Complaint is proved and grant the Order for Possession to the Estate in Form C. The OTA requires that the Order be executed 15 calendar days from the date of the Order. The Complainant suggested that a period of 60 days is more reasonable and appropriate. I agree. Rena Carew will have 60 calendar days from the date of the Order to vacate the premises.

[30] I stipulate that this decision does not determine or foreclose Anne “Rena” Carew from advancing any claims she has in Probate Court or by any cause of action, such as a constructive trust or unjust enrichment. The Order granting the Estate possession shall clearly indicate that any such claim is not extinguished or affected by the Order.

[31] The Complainant did not seek costs.

Norton, J.