

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

B E T W E E N :

ALEX FORMAN and ANNIE FORMAN

Applicants

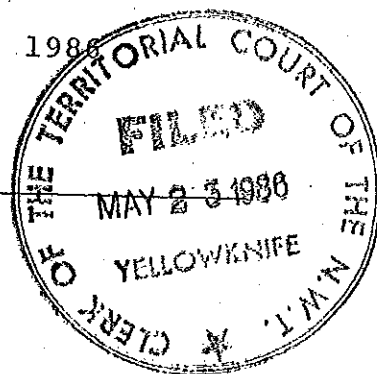
and

ROBERT METCALFE and SHANNON METCALFE

Respondents

Heard at Yellowknife, N.W.T. on May 20, 1986

Reasons Filed: May 23, 1986



REASONS FOR JUDGMENT

of

His Honour Judge Thomas B. Davis

Counsel for the Applicants: Mr. T. Richard

Counsel for the Respondents: Mr. J. Bayly

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

B E T W E E N :

ALEX FORMAN and ANNIE FORMAN

Applicants

and

ROBERT METCALFE and SHANNON METCALFE

Respondents

REASONS FOR JUDGMENT

This application by the Owner/Landlords of property being occupied by the Respondents, under a four (4) month lease on which the monthly payments have been made, is for an order for possession of the premises resulting from the expiry of the term of the lease and a notice that the property was to be vacated by May 1, 1986, sent to the Tenants/Respondents on March 5, 1986, and shown as Exhibit B to an Affidavit of Applicant Alex Forman.

The Respondents, through their solicitor, John Bayly, have opposed the application on the equitable ground that such an order is not appropriate since the parties had been negotiating

the sale of the property to the Tenants, which sale was dependent upon the Applicants obtaining suitable credit checks by agents of the Applicants. The Respondents have authorized the checks and believe two of the three required have been favourable. The Respondents say that the occupation of the premises should be extended on a monthly basis similar to the term of the lease until the Applicants have completed their credit checks for which the Respondents have done all that is necessary, and for which only the action of the Applicants or their agents can complete the required credit inquiries.

Under the Landlord and Tenant Act, the Tenant, through his solicitor, acknowledges compliance by the Landlord with the terms and requirements of notice under Section 69 of the Act, but says that pursuant to Section 34(1)(e) the Landlord should have explained in an Affidavit the grounds for refusal of the Tenant to give up possession.

I am satisfied that Section 69 as amended states the requirements for an application for possession of residential premises. Such section does not however restrict the Court from hearing any other relevant facts (e) or the reasons given for the failure to deliver up possession (c).

Under the application before the Court, there is no jurisdiction to determine the legal status of an alleged agreement of sale or to interpret terms of such a document.

The Court may take into account the positions of the parties and the effect on them of an order for possession, subsequent to the expiry of a specific termed tenancy.

The Tenants have tendered, and again have re-tendered the rental for the month of May, 1986, acknowledging that such period is subsequent to the original term of the tenancy. There is still due and owing \$8.00 on the rental for the month of April owing to the Landlord.

I am satisfied that the Tenants/Respondents are overholding the premises of the Applicant and are subject to an order for possession.

Under Section 68(1), the Landlord is entitled to compensation for use of premises and I find that the Tenants are to pay forthwith to the Landlord, the arrears of \$8.00, plus the rental amount of \$1,450.00 as re-tendered for the current occupancy of the premises for the month of May.

Taking into account the extraneous matter of the alleged agreement for sale and the failure of the parties to finalize the terms of the document, either by formally terminating or completing the alleged agreement within a reasonable period, I hereby order that the Landlord/Applicant is entitled to possession of the premises on the last day of June, 1986, and

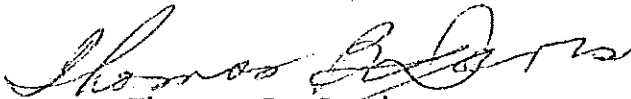
that the Respondents will be required to pay the sum of \$1,450.00 on or before the 1st day of June, 1986, for the occupation and use of the premises during the month of June, at the end of which an order for possession will be effected.

I also find that the tendering the payment of the monthly payments for the months of May and June will not operate as a waiver of the notice to terminate the tenancy and does not create a new tenancy, as authorized by Section 68(2) of the Act.

Further, pursuant to Section 72(1), if the possession is not given up on or before the last day of June, 1986, an order for eviction will issue without further order.

And it is further ordered that one half the usual costs as taxed shall be allowed to the Applicant against the Respondents.

Dated at Yellowknife, N.W.T. this 20th day of May, 1986.


Thomas B. Davis
Judge