

FIRST DIVISIONAL COURT.

JUNE 25TH, 1920.

## RE ROUSSEAU AND LECLAIR.

*Landlord and Tenant—Monthly Tenancy—Proceedings under Overholding Tenants Provisions of Landlord and Tenant Act, R.S.O. 1914 ch. 155—Proof of Notice to Tenant—Onus—Written Notice—Oral Notices—Failure to Shew Termination of Tenancy.*

Appeal by tenant of No. 16 Durham Street, Sudbury, from an order of the Judge of the District Court of the District of Sudbury, under the overholding tenants provisions of the Landlord and Tenant Act, R.S.O. 1914, ch. 155, requiring the appellants to give the landlord immediate possession of the demised premises.

The appeal was heard by MACLAREN and MAGEE, JJ.A., MASTEN, J., and FERGUSON, J.A.

T. M. Mulligan, for the appellant.

J. E. Lawson, for the landlord, respondent.

FERGUSON, J.A., reading the judgment of the Court, said that the tenancy was a monthly one, and the rent was payable on the first of each month. On the part of the landlord it was sworn by one Turpin that on the 21st February, 1920, he gave the tenant notice, but only by word of mouth, "to leave the store premises, if possible, by the 1st March, but in any event on or before the 1st April," and on the 22nd February sent the tenant a written notice demanding possession of the premises on or before the 1st March, but not later than the 1st April. Neither of these notices was proven at the hearing, but the landlord proved and the tenant admitted a notice in writing, dated the 18th February, reading, "I would ask you to be kind enough to have the place vacant before the 1st March." Evidence of an oral notice said to have been given about the 10th February was also received. There was also evidence of a notice to quit on the 1st April, given in the month of March.

The District Court Judge based his order on the written notice of the 18th February. That notice was not directed to the tenant, but to her husband.

It was not argued for the landlord that the notice of the 18th February was sufficient. Counsel for the landlord asked the Court to find that notice was given orally on the 9th or 10th February, and was sufficient.

Section 75 of the Landlord and Tenant Act, under which the proceedings were taken before the Judge, indicates that the land-