

BRITTON, J.

JUNE 17TH, 1915.

CHILDS v. KING.

Landlord and Tenant—Lease—Assignment without Leave—Unreasonable Refusal of Lessor to Consent—Right to Assign—Declaration—Damages—Costs.

Action for a declaration that the plaintiff was entitled, without the written consent of the defendant, the lessor, to make a valid assignment of the lease of certain premises to the plaintiff; and for damages.

The lease provided that the plaintiff, the lessee, should not sublet or assign the lease without the consent in writing of the defendant, but that consent should not be unreasonably refused.

The plaintiff agreed to sell and assign the lease to Rose Plesky, and applied to the defendant for her consent, which was refused. The defendant brought an action against Plesky for possession, which was settled. The defendant then gave her consent to the assignment, but refused to pay any damages or costs of this action (which was then pending) to the plaintiff.

The action was tried without a jury at Toronto.

S. H. Bradford, K.C., and H. J. Martin, for the plaintiff.

G. H. Watson, K.C., and N. Sinclair, for the defendant.

BRITTON, J., said that the defendant was entitled to a reasonable time to make inquiry as to the character of the assignee, the use intended, and other matters material to be known. The plaintiff was ready to give and did give such information as was necessary, and the defendant had ample time to verify that information before the commencement of this action. The defendant took the position that she had the right to have the assignee enter into covenant relations with her as lessor. The defendant was wrong in this, and unreasonably refused to consent to the assignment. The defendant having so acted, the plaintiff had the right to complete and deliver the assignment, and to allow the assignee to go into possession: *Evans v. Levy*, [1910] 1 Ch. 452; *West v. Gwynne*, [1911] 2 Ch. 1; *Waite v. Jennings*, [1906] 2 K.B. 11.

The assignee claimed damages from the plaintiff for delay and loss of business, and the plaintiff, in settlement of that claim, paid \$150, which he now claimed from the defendant. The plaintiff was not obliged to pay that sum, and could not recover it from the defendant.