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APPELLATE DIVISION.

SECOND DIVISIONAL COURT. FEBRUARY 17TH, 1919.

SCOTT v. PARADE.

*Landlord and Tenant—Action for Rent—Tenant Abandoning
Premises—Want of Repair—Right to Rent—Counterclaim—
Damages—Absence of Covenant to Repair.*

Appeal by the defendant from the judgment of McLENNAN, Dist. Ct. J., in an action in the First Division Court of the District of Rainy River.

The action was for rent of a store. The tenancy being for 3 years, the tenant (the defendant) gave notice that, on account of the want of repair of the store, he would abandon the premises. He sent the key to the plaintiff, who declined to take possession at the time. Some months later, he took possession, and leased the premises to another tenant, without notice to the defendant. He then brought this action for the rent accrued due after the notice by the defendant and before the landlord took possession.

The defendant counterclaimed for damages by reason of the nonrepair.

The Judge in the Division Court gave judgment for the plaintiff for \$100 and costs, and dismissed the counterclaim.

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, and LATCHFORD, JJ.

A. A. Macdonald, for the appellant.

W. C. H. Swinburne, for the plaintiff, respondent.

THE COURT held that the landlord was entitled to the rent sued for. *Crozier v. Trevarton* (1914), 32 O.L.R. 79, approved. The Court held, also, that the counterclaim could not succeed in the absence of a covenant by the landlord.

Appeal dismissed with costs.