

NOVA SCOTIA.

COUNTY COURT FOR DISTRICT NO. 5.

JANUARY TERM, 1911.

McDONALD v. HAMILTON.

Landlord and Tenant—Dwelling House—Parol Agreement—Tenancy from Month to Month—Damages to Premises Alleged to be Owing to Tenant's Negligence—Permissive Waste — Liability of Tenant — Implied Covenant — Evidence.

H. R. Fitzpatrick, for plaintiff.

R. H. Graham, K.C., for defendant.

PATTERSON, Co.C.J.:—This is an action of a rather unusual kind. The defendant rented a house from plaintiff in October, 1909, and occupied it from that time until January 7th, 1910, as a tenant from month to month. There was no written agreement of lease. The house was heated with hot water. On the night of 5th of January (there is some dispute as to whether this should be the 5th or 6th, but the date, in my opinion, is of no importance), two of the coils broke or burst open, owing to the water in them having been frozen. The weather was particularly severe at that time, but there is no defence of vis major or anything of that sort. It cost the plaintiff \$33.75 to repair the damage and for this sum he sues defendant alleging: (1) permissive waste, and (2) breach of implied covenant to use house in a tenant-like manner. His first claim may be dismissed at once, but his second is good in law if the facts sustain it. A short passage from Woodfall's Landlord & Tenant may be appropriately cited here; "The contract of tenancy usually contains some express stipulation of repair by the tenant, but if it contain no such stipulation, or only contain a stipulation for rent, and whether it be by deed, writing without deed, or by parol only, a stipulation is implied by law—in the absence of any express stipulation but not otherwise—that the tenant will use the premises in a tenant-like manner. . . . A tenant at will is clearly not liable for permissive waste nor is a tenant from year to year."