

or sold, but the tenant was put to considerable inconvenience, and I assess the damage on this head at \$100.

I am not satisfied that any cause of action had arisen for breach of covenant for not making a reasonable rebate in respect of the rent distrained for, the rent not having been paid or tendered before the distress; nor is it clear from the statement of claim that such cause of action is stated or relied upon. This, however, seems immaterial, as any relief to which the tenant may be entitled in respect of the rebate can be administered under Rules 1069 and 1072 in dealing with the money which has been paid into Court as security for the rent distrained for. This also makes it unnecessary to direct judgment for the return of the goods replevied, as all claims of the parties can be adjusted in the present action.

On their counterclaim the defendants are entitled to recover the rent accrued due under the lease from the 1st March, 1909, to the 1st October, 1909, subject to the rebate as ascertained or to be ascertained under the judgment of Riddell, J. They are also entitled to recover the rent due in respect of the six rooms during the same period.

The claim for double the yearly value for holding over these rooms I disallow. I find that, by the agreements under which they were rented, the plaintiff was to hold them during the term of his lease of the hotel.

Reference to the Master at Barrie to ascertain:—

(a) The amount of rent due to the defendants at the date of the distress and up to and inclusive of the 1st October, 1909, in respect of the hotel premises, at the rate mentioned in the lease, and for the additional sum of \$10 per month agreed to be paid in consideration of putting in heating plant and apparatus.

(b) The rent due at and for the same periods for the six rooms in connection with the hotel.

(c) The rebate of the rent of the hotel as reserved by the lease, as the same may be or has been ascertained . . . under the judgment of Riddell, J.

(d) The amount of the rebate and the sum I have allowed as damages for excessive distress to be set off against the sum which may be found due for rent under the above heads; and the defendants to have judgment for the excess.

The plaintiff will have the costs of the action except in so far as such costs relate to his claim in replevin. The conduct of the defendants was harsh and unreasonable . . . and they should have no costs of the action or counterclaim.

Further directions and subsequent costs reserved.