

MACMAHON, J.

NOVEMBER 2ND, 1903.

TRIAL.

CITY OF TORONTO v. MALLON.

Landlord and Tenant—Action for Rent—Agreement for Lease—Refusal to Sign Lease—Taking Possession—Possession Referable to Agreement—Use and Occupation.

Action by the city corporation to recover money as rent for certain butchers' stalls in a new market erected by plaintiffs.

J. S. Fullerton, K.C., and W. C. Chisholm, for plaintiffs.

F. A. Anglin, K.C., for defendants.

MACMAHON, J.—. . . At the time stalls 2, 72, and 74 were knocked down by the auctioneer to defendants, they had left with their agent a marked cheque payable to the order or the city treasurer, which was intended to be a deposit equal to the first month's rent. That cheque was delivered to the city treasurer; but on the following day Mr. Mallon wrote to the mayor stating that he was not aware at the time of the sale that any favouritism was being shewn in the sale of the stalls in the market by any one tenant over another, but that, having since the sale ascertained that there was favouritism, he had for that reason decided not to take the stalls which had been knocked down to him; but that he had given instructions to the bank not to honour the cheque.

If the matter had ended there, of course this action must have failed, as there was no present demise. However, defendants took possession of stalls 2 and 72 on the 15th November, and continued to occupy them, and must be held to have taken possession under the agreement signed on the day of sale. . .

The contract signed by defendant Mallon after the sale for stall number 2 is on a printed form prepared by the city, and reads: "Toronto, August 27th, 1902. I have to-day agreed to lease from the city of Toronto stall No. 2 in new St. Lawrence market for one year from 1st November, 1902, at monthly rent of \$94, and agree to execute lease according to printed conditions of leasing when notified by city solicitor. John Mallon, per F.S."

The contracts for stalls 72 and 74 are the same except as to the rent; that for 72 being \$45 and for 74 being \$16 a month.

Specific performance would not be decreed, as the agreements for leases are each only for a year, and there were only