

tenant, and the plaintiff was endeavouring to get terms from Greedy and the defendant which would justify him in taking a lease from Greedy; the defendant was willing to pay a certain amount, but not more, as rent; and this was not sufficient to answer the plaintiff's purpose. These were the admitted facts. The plaintiff said, in addition, that the defendant, while declining to pay any further amount explicitly as rent, agreed to pay \$100 as a "bonus," which would be the same in effect as paying an increased rent. The defendant admitted that the \$100 was to be paid, but said that it was to be paid toward the expense of a stairway. Greedy swore that the whole expense of the stairway would not be \$50; and he was expressly accredited by the trial Judge. Archer, a witness for the plaintiff, expressly accredited by the trial Judge, said that the defendant stated that he would give the \$100 "as a bonus." The trial Judge was of opinion that the evidence of these two witnesses was not helpful; but, RIDDELL, J., said, it was obvious that these two pieces of evidence were entirely overlooked, and that the result would have been different had they received due consideration; and, under the rule in *Beal v. Michigan Central R.R. Co.* (1909), 19 O.L.R. 502, 506, it was the clear duty of the Court to allow the appeal and give judgment for the plaintiff's claim—the balance of the 6 months' rent.

The defendant gave a notice to quit on the assumption that he was a tenant from month to month; and he asserted that his landlord took possession.

Such acts as receiving the key, putting up a placard stating that the premises were for rent, etc., were not necessarily an acceptance of the premises by way of surrender; it depended on the intention: *Mickleborough v. Strathy* (1911), 23 O.L.R. 33, and cases cited. It was clear that all that was done by or for the plaintiff in connection with the premises was in effect to endeavour to obtain another tenant—if such a tenant could be obtained, the attempted surrender of the defendant would be accepted and effective at that moment, but not till then.

The appeal should be allowed, and judgment entered for the plaintiff for \$730, with interest from the teste of the writ of summons, and costs of the action and appeal.