

and the authorities, stated his opinion that the appellant was not entitled to succeed in either contention.

The rescission of the contract was caused by the default of the defendant; and he was not entitled to profit by his default by recovering the \$500.

The appeal should be dismissed with costs.

CLUTE, SUTHERLAND, and KELLY, JJ., agreed with MULOCK, C.J. Ex.

RIDDELL, J., also agreed in the result, for reasons stated in writing.

*Appeal dismissed with costs.*

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SECOND DIVISIONAL COURT.

MARCH 25TH, 1918.

\*RE BAGSHAW AND O'CONNOR.

*Landlord and Tenant—Lease—Proviso for Re-entry—Default in Payment of Rent—Tender after Default—Landlord and Tenant Act, R.S.O. 1914 ch. 155, sec. 19—Oral Agreement to Terminate Tenancy—Effect of—Summary Proceedings under Overholding Tenants Provisions of Act (secs. 75 et seq.)—Relief against Forfeiture.*

Appeal by Albert O'Connor, the tenant, in a summary proceeding under the overholding tenants' sections of the Landlord and Tenant Act, from an order of the Judge of the District Court of the District of Temiskaming, directing the issue of a writ of possession to put the landlord, George Albert Bagshaw, into possession of the premises leased to the appellant.

The appeal was heard by MULOCK, C.J. Ex., BRITTON, CLUTE, SUTHERLAND, and KELLY, JJ.

Erichsen Brown, for the appellant.

J. M. Ferguson, for the landlord, respondent.

The judgment of the Court was read by MULOCK, C.J. Ex., who said that Bagshaw demised premises to O'Connor for 5 years from the 1st November, 1916, at a monthly rental of \$100, payable on the first day of each month in advance. In the lease (under the Short Forms of Leases Act) there was a proviso for re-entry by the lessor on non-payment or non-performance of