

ANDREWS *v.* MINTER.

Opinion delivered June 10, 1905.

LEASE—BREACH—DAMAGES.—For breach of a contract of lease the lessee is entitled to recover the difference between the price he agreed to pay and the rental value, with interest, together with any actual expenses incurred.

Appeal from Benton Circuit Court.

JOHN N. TILLMAN, Judge.

Reversed.

*Rice & Patton*, for appellant.

Only nominal damages could be recovered. 8 Am. & Eng. Enc. Law, 557, 593; 3 Suth. Dam. 165, 148. Profits, unless an element of contract, are not recoverable. 53 L. R. A. 97; 48 Ill. 308; 106 Wis. 78.

*E. P. Watson*, for appellee.

All exceptions to the testimony were waived. 62 Ark. 254; 70 Ark. 197; 45 Ark. 524; 55 Ark. 376; 70 Ark. 427. The bill of exceptions is insufficient. 38 Ark. 102; 35 Ark. 220; 32 Ark. 529. Plaintiff was entitled to special damages as alleged. 42 Ark. 257; 8 Am. & Eng. Enc. Law, 584, 695.

BATTLE, J. W. L. Minter rented from Lucinda Andrews a certain dwelling house and lot, in Bentonville, Ark., for six months from March 30, 1903 for which he agreed to pay \$8.33 1-3 per month. He caused to be hauled and placed on the lot two loads of manure at a cost of \$5. This was done with the knowledge and consent of Mrs. Andrews. She sold the house and lot, and refused to deliver him possession. He sued her for damages, and recovered \$100.

He testified that the rental value of the house and lots was from \$12 to \$15 per month. Other witnesses, that it was less. The damage he was entitled to recover was the difference between the price he agreed to pay and the rental value. 3 Sutherland on Damages (3d Ed.), page 2578. He was entitled to recover on account of this difference, according to his own testimony, \$22, and \$5 for the manure, making \$27.

If he will within one week remit \$73, his judgment will be affirmed for \$27 and 6 per cent. per annum interest from October 3, 1903, the date of his judgment, and costs of the trial court; otherwise, the judgment will be reversed, and the cause remanded for a new trial.