

defendant, and that the plaintiffs were no longer liable for rent. Counterclaim for rent and interest.

A. C. McMaster, for the plaintiffs.

G. Bell, K.C., for the defendant.

TEETZEL, J.:—By lease dated April, 1907, the defendant leased to the plaintiffs the ground floor and cellar of 179 Bay street, Toronto, for five years from the 1st May, 1907, at \$50 per month, under which lease the plaintiffs took possession and sublet to one . . . who occupied the premises for about a year, when . . . the premises became vacant. The defendant was engaged by the plaintiffs to secure another tenant for them, which he endeavoured to do by putting up a "to let" notice in the window of the vacant premises. The defendant also represented the owner of the adjoining premises, 177 Bay street, and other adjacent premises. During the first week of November, 1908, the defendant, being desirous of doing some repairs in No. 177, arranged with the tenant . . . Ritter, who was a cobbler, to remove his bench and some other trifling effects into No. 179 . . . subject to the provision that he should remove therefrom upon request without delay, and during his occupancy, which was not of the entire premises, but only of the ground floor, he should pay a rental of \$3 per week, and should allow the "to let" notice to remain up, and should shew the premises to prospective tenants who might call. The defendant did not consult the plaintiffs before putting Ritter into the premises, and, as soon as they discovered the fact that he was occupying them, they wrote the defendant notifying him that . . . they looked upon the defendant's act as at once releasing them from further liability under the lease, and since that notice the plaintiffs refused to pay further rent. . . .

I find, upon the evidence, that in putting Ritter in possession of a portion of the premises the defendant did not intend to terminate the lease which he had made to the plaintiffs, but that he intended Ritter's occupation to be only temporary, and, while it was for the convenience of Ritter pending the repairs to No. 177, it was also intended to be for the advantage and for the benefit of the plaintiffs, because it was Ritter's duty, under the arrangement, to shew the premises to prospective tenants, and he was also under obligation to leave immediately upon request; and I further find that immediately upon the defendant receiving the plaintiffs' notice, Ritter quitted the premises and was moved into another place owned or controlled by the defendant.