

pursuant to the agreement, and other relief. Counterclaim for negligence.

D. O'Connell, Peterborough, for plaintiff.

E. J. Daly, Ottawa, for defendant.

ANGLIN, J.:—By sublease, dated 1st August, 1905, the plaintiff became tenant of the premises under T. Lindsay and Co., who were lessees thereof from the defendant for a term expiring on 15th February, 1907. On 4th August, 1905, the plaintiff obtained from the defendant an agreement for a lease of the same premises for a term of 3 years from 16th February, 1907, to 16th February, 1910, at \$90 a month, and for an extension of lease for two years to 16th February, 1912, at \$100 a month. The plaintiff went into possession under his sublease from T. Lindsay & Co., and occupied the premises as a fruit and confectionery shop.

On 22nd January, 1907, the building was partly destroyed by fire and rendered unfit for occupation. After the fire the plaintiff arranged for the return to the vendors of a number of store fittings, upon which he had made comparatively small payments. Other fittings which belonged to him were sold. Most of his fixtures were thus disposed of.

The plaintiff remained in Ottawa for 2 or 3 weeks after the fire. His evidence, corroborated by that of his daughter, is that, prior to his leaving Ottawa, the defendant had obtained the key of the premises for the purpose of making repairs, and had, at least once, and perhaps twice, refused to return it, intimating that he intended to retain possession. The plaintiff then went to Montreal and remained there about two months, returning to Ottawa in the early part of April. According to the evidence of himself and his brother-in-law, who accompanied him, he then again demanded possession of the premises from the defendant, and was again refused. The premises were not then ready for occupation, but were made so about the early part of April.

The defendant denies that before the plaintiff went to Montreal he demanded possession, and was refused. In the statement of defence it is admitted that the plaintiff "returned to Ottawa and claimed possession of the premises, which was refused to him by the defendant." The defendant further stated that early in February he went to the plaintiff and asked that he be given the lease, which