It would then appear that there was nothing done by the plaintiffs after the arrangement between the defendant and Ritter which could bind them by way of estoppel.

There is another line of cases in which the same terminology is employed. The tenant gives up possession, gives up the key, or does some other act indicating his willingness that another tenant be found for the landlord. This in itself is of no effect, nor would the act be helped by the mere fact that the key is retained by the landlord. But, if the landlord by receiving the key or retaining it intended thereby to take possession, and especially if he did take possession, the act becomes effective. And the Courts have considered in many cases that the exception in the Statute of Frauds applies to a case of this kind. . . .

[Reference to Foa, 4th ed., p. 638; Phené v. Popplewell, 12 C.B.N.S. 334, 339; Oastler v. Henderson, 2 Q.B.D. 575; Fenner v. Blake, [1900] 1 Q.B. 429; Easton v. Perry, 67 L.T.R. 290.]

I am not sure that I can make out the principle running through the cases, but this much seems to be clear: that in order that the lease shall be surrendered by operation of law there must be a resumption of possession by the landlord through himself or his (new) tenant; that there is no difference in the effect of a landlord himself going into possession and of a new tenant obtaining possession; and that, aside from unequivocal acts, there must be on the part of the landlord an intention to take possession and put an end to the lease, i.e., no longer "to hold the tenant to his lease" (2 Q.B.D. at p. 578); and that the taking possession for a limited time of two rooms by the landlord is not one of these unequivocal acts, but the effect of such an act depends on the intention (or not) "to hold the tenant to his lease."

In the present case it was only the one room, downstairs, which Ritter was allowed to occupy, and for a short time only: I cannot find that giving possession to another has any more effect than if the landlord himself took possession, and, in my opinion, the intention must be looked at.

Nor is the case of the plaintiffs advanced by the proposition that the transaction was in effect a continuing offer by the defendants to the plaintiffs . . . to put an end to the tenancy, and accepted by the plaintiffs as soon as they knew of it. In an offer the intention must be looked at; and all the circumstances here are against the landlord having intended to make or having made an offer.

There being no surrender by act and operation of law, the plaintiffs must fall back upon eviction. That has been satisfactorily dealt with by the trial Judge.