

Lawtel[\[Full Text\]](#)**URATEMP VENTURES LTD v (1) JOHN COLLINS (2) MARY CARRELL (1999)****CA (Peter Gibson LJ, Mance LJ, Moore-Bick J) 2/12/99**

LANDLORD AND TENANT - HOUSING - REAL PROPERTY - HOSPITALITY
RESIDENTIAL PREMISES : SINGLE ROOMS : COOKING FACILITIES : PREPARING AND
COOKING FOOD : EXCLUSIVE POSSESSION : LEASES : LICENCES : ASSURED
TENANCIES : TENANTS : TENANCIES : LETTINGS : POSSESSION PROCEEDINGS :
DWELLING-HOUSES : DWELLINGS : HOTELS : PROVISION OF SERVICES : HOUSING
ACT 1988

Long-term occupation of a room in a hotel was pursuant to a licence and not a lease. A prohibition on cooking facilities in the room meant that the room did not constitute a dwelling-house, and so could not be the subject of a letting for the purposes of the Housing Act 1988. * Leave to appeal to the House of Lords granted.

Consolidated hearing of two appeals by the claimant from orders of HH Judge Cotten dismissing the claimant's proceedings for orders that each respondent deliver up possession of the room which each of them occupied. The judge held that each respondent was an assured tenant of their respective room. The claimant operated a hotel, some of the rooms in which were available for long-term occupation. The claimant contended that such occupation was by way of licence, given the services which it alleged were provided to each of the respondents. In the alternative, the claimant contended that each room was incapable of being the subject of a letting as a separate dwelling, and so did not constitute a dwelling-house under s.1(1) Housing Act 1988, since neither room had any cooking facilities, pursuant to an express provision of the agreement between itself and each tenant which prohibited cooking in the rooms. The respondents contended that: (a) no material services had been provided and/or taken advantage of by them; and (b) they each possessed cooking equipment which they had brought into their room for the purpose of cooking or heating food. The second respondent alleged that, as the result of a subsequent agreement between herself and the claimant's manager, she had been granted exclusive occupation of her room and she had been permitted to cook in her room. The judge held that: (i) whatever services may have been available, neither respondent had made any or any substantial use of them, thereby warranting the conclusion that the respondents' occupation of the rooms was by way of lease and not licence; and (ii) the possession by each respondent of cooking equipment meant that each room possessed cooking facilities, such that each room was a dwelling-house for the purposes of the Act. The judge's conclusions as to (i) and (ii) above led him to conclude that each respondent had the benefit of an assured tenancy. In the circumstances the judge did not deal with the second respondent's contention that the terms as to her occupation of her room had been varied.

HELD: As to both (i) and (ii), the judge had erroneously concentrated on the way in which each agreement was performed, rather than on the rights and obligations arising under each agreement. As to (i), the use made by the respondents of the services which were available to them was beside the point. The fact was that the availability of such services deprived the respondents of exclusive possession, and led inevitably to the conclusion that occupation of each room was enjoyed by way of licence only. As to (ii), it was clear that the agreement prohibited cooking in the rooms. The absence of cooking facilities meant that each room could not be a dwelling-house for the purposes of the Act. Westminster City Council v Clarke (1992) 2 WLR 229 and Parkins v Westminster

City Council (1998) 1 EGLR 22 considered. The mere fact that each respondent possessed cooking equipment could not affect the rights conferred by each agreement at the outset. It followed that in the case of the first respondent, the claimant's appeal was to be allowed. However, in the case of the second respondent, there was evidence to suggest that the terms of her occupation had been altered so as to enable her to maintain her claim to an assured tenancy. As the judge had failed to deal with that aspect of the case, the action against her would be remitted to the county court for a rehearing.

Orders accordingly.

* The House of Lords granted an application by John Collins seeking leave to appeal in this case on 18 July 2000. The Appeal Committee had made a provisional unanimous decision to grant leave following a consideration of the applicant's petition and had invited objections from the respondent on 22 June 2000. The appeal was set down for hearing and referred to an Appellate Committee on 8 November 2000.

Phillip Galway-Cooper instructed by Fladgate Fielder for the claimant. Richard Vain instructed by Alan Edwards & Co for the first respondent. Paul Staddon instructed by Oliver Fisher & Co for the second respondent.

LTL 2/12/99 : TLR 10/12/99

Judgment Official

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