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CASES SEARCH RESULTS

****Uratemp Ventures Ltd v Collins (HL).***

Landlord and Tenant
Tenancies

Uratemp Ventures Ltd v Collins and another.

****Uratemp Ventures Ltd v Collins (HL).***

Cite: [2001] UKHL 43; BLD 1210013191.

Court: House of Lords.

Judge: Lord Irvine of Lairg LC, Lord Bingham of Cornhill, Lord Steyn, Lord Hobhouse of Woodborough and Lord Millett.

Hearing Date: 11 October 2001.

Representation: Andrew Arden QC and Richard Vain (instructed by Alan Edwards & Co) for the appellant. Michael Barnes (instructed by the Treasury Solicitor) as amicus curiae.

Legislation Considered: [Housing Act 1988, s 1\(1\).](#)

Annotations: Decision of the Court of Appeal [1999] All ER (D) 1353 reversed.

Landlord and tenant—Tenancy—Tenancy distinguished from licence—Long term resident of hotel room—Whether room a 'dwelling house'—Whether cooking facilities a necessary attribute of dwelling house— [Housing Act 1988, s 1\(1\).](#)

The respondents were the owners of a hotel which had 58 rooms, 15 of which were occupied by long-term residents. The appellant was one of them. In January 1985 he took up occupation of one of the rooms. He changed rooms three times. The room occupied by the appellant when the possession proceedings were started by the respondents had a single bed, some furniture, a shower and a basin. No cooking facilities were provided in any of the rooms which the appellant occupied, although each of them contained at least one power point. The appellant brought in some electrical equipment, such as a pizza warmer and a toasted sandwich maker, to enable him to make simple meals. In 1993 the hotel published rules, which on safety grounds,

prohibited cooking in rooms otherwise than by the use of microwaves and kettles. In 1998 the respondents served a notice terminating what they contended was the appellant's licence to occupy. The judge dismissed the respondents' claim for possession and granted the appellant a declaration that he held the room on an assured tenancy within the meaning of s 1(1) of the Housing Act 1988. It was not disputed that the room was part of a house. The respondents denied that it was let or, if it was, that it constituted a dwelling; though if it did it was a separate dwelling, since the appellant did not share accommodation or facilities with anyone else. The judge held that it was let as a separate dwelling and that the appellant's meagre culinary equipment satisfied any requirement that a dwelling should possess cooking facilities. On the respondents' appeal the Court of Appeal considered that the judge had made inadequate findings in relation to the question whether the appellant's occupation was under a licence or a tenancy, and would if necessary have remitted the case to the county court for retrial of that issue. In the event they did not do so because, in the view of the majority, the absence of cooking facilities precluded a finding that the room was a dwelling. The appellant appealed. The respondents having withdrawn their opposition to the appeal it was therefore inappropriate to remit the matter to the county court to determine whether there was a letting to the appellant.

The appeal would be allowed.

Cooking facilities were not an essential attribute of a dwelling house within the meaning of s 1(1) of the 1988 Act. Save that a dwelling house might be a house or part of a house, no statutory guidance was given on its meaning. The concept, however, was clear: it described a place where someone dwelt, lived or resided. In deciding in any given case whether the subject matter of a letting fell within that description it was proper to have regard to the object of the legislation, directed as it was to giving a measure of security to those who made their homes in rented accommodation at the lower end of the housing market. The time at which it had to be judged whether premises were entitled to protection was when the action was brought. At that stage it was necessary to consider the terms of the letting, the premises let and the use made of them by the tenant. In the instant case it was plain on the evidence that the room was the appellant's home, the place where he lived, and that was so whether he had his meals out or warmed up food to eat in his room or did a little rudimentary cooking or a bit of all three. Accordingly the room occupied by the appellant was his dwelling house. Since the

respondents had withdrawn their opposition to the appeal it was inappropriate to remit the matter to the county court to determine whether there was a letting to the appellant.

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law report

Kitchen is not a necessary part of a dwelling

HOUSE OF LORDS

Published October 18, 2001

Uratemp Ventures Ltd v Collins

Before Lord Irvine of Lairg, Lord Chancellor, Lord Bingham of Cornhill, Lord Steyn, Lord Hobhouse of Woodborough and Lord Millett

Speeches October 11, 2001

A "dwelling" within the meaning of section 1(1) of the Housing Act 1988 was a place where a person lived, treating it as home; there was no requirement that cooking facilities had to be available for premises to come within that interpretation.

The House of Lords so held, when allowing an appeal by the defendant, John Collins, from the Court of Appeal (Lord Justice Peter Gibson and Mr Justice Moore-Bick, Lord Justice Mance dissenting) (*The Times* December 10, 1999) which had reversed the decision of Judge Cotran, sitting at West London County Court.

The judge, dismissing a claim by the plaintiffs, Uratemp Ventures Ltd, for possession of Room 403, the Viscount Hotel, Prince of Wales Terrace, Kensington, had concluded that Mr Collins was a tenant of the room and as such was entitled to an assured tenancy under the 1988 Act.

The defendant occupied a single room as a long-term resident in a hotel. The room contained a bed, some furniture, a shower and a basin, but

no cooking facilities. A power point in the room enabled the defendant to obtain electrical equipment, such as a toasted sandwich maker, a kettle and a warming plate with which he could heat ready-cooked food which he brought in.

The Court of Appeal would have remitted the plaintiffs' claim that the defendant was a licensee, not a tenant, to the county court for retrial; however the conclusion of the majority, that cooking facilities were an essential attribute of a dwelling under section 1(1) of the Act, made such a course unnecessary.

The plaintiffs took no part on the appeal to the House of Lords.

Mr Andrew Arden, QC and Mr Richard Vain for the defendant; **Mr Michael Barnes, QC**, as *amici curiae*.

THE LORD CHANCELLOR said that the key issue was whether, when the proceedings were brought, the room could in law qualify as a dwelling only if cooking facilities were there available.

"Dwelling" was not a term of art, but a familiar word in the English language which in the present context connoted a place where one lived, regarding and treating it as home.

Such a place did not cease to be a dwelling merely because one took all or some of one's meals out, or brought take-away food in to the exclusion of home cooking, or at times, prepared some food for consumption on heating devices falling short of a full cooking facility.

He would allow the appeal.

LORD BINGHAM said that, save that a dwelling-house might be a house or part of a house, no statutory guidance was given on the meaning of that now rather old-fashioned expression. But the concept was clear enough.

In deciding in any given case whether the subject-matter of a letting fell within that description it was proper to have regard to the object of the legislation, directed as it was to giving a measure of security to those who made their homes in rented accommodation at the lower end of the housing market. It was not to be expected that such accommodation would necessarily offer all the amenities to be found in more expensive accommodation.

The time at which it had to be judged whether premises were entitled to protection was when the action was brought.

Agreeing with the Lord Chancellor, Lord Steyn and Lord Millett he would allow the appeal.

LORD MILLETT said that in both ordinary and literary usage, residential accommodation was a dwelling if it was the occupier's home: it was the place where he lived and to which he returned and which formed the centre of his existence.

Just what use he made of it when living there depended on his mode of life. No doubt he would sleep and usually eat there. He would often prepare at least some of his meals there. But his home was not the less

his home because he did not cook there but preferred to eat out or bring in ready-cooked meals.

It had never been a legislative requirement that cooking facilities had to be available for premises to qualify as a dwelling.

Nor was it at all evident what policy considerations dictated that a tenant who prepared his meals at home should enjoy security of tenure while a tenant who brought in all his meals ready-cooked should not.

How then had the courts reached the conclusion that, as a matter of law, the presence of cooking facilities was an indispensable characteristic of a dwelling?

His Lordship referred to nineteenth-century cases relating to the parliamentary franchise and to twentieth-century cases relating to the rent Acts, in which a single room might constitute a dwelling and the presence of cooking facilities had not been regarded as determinative.

He referred to sharing cases from which the supposed requirement as to cooking facilities derived.

He said that such cases had not decided that a kitchen was an essential part of a dwelling, so that premises which lacked cooking facilities were not a dwelling.

What they decided was that the essential feature of a dwelling was that it contained living accommodation, and that every room which formed part of the tenant's living accommodation, including the kitchen if there was one, formed part of his dwelling.

It was fallacious to reason that, because a kitchen was a living room and therefore part of any dwelling which possessed one, premises which did not possess a kitchen were not a dwelling. If the word "sitting-room" were substituted for "kitchen" the fallacy was exposed. In the present context the word "essential" was best omitted.

In *Westminster City Council v Clarke* ([1992] 2 AC 288, 299) it was natural, but unfortunate, that Lord Templeman, when merely summarising, in obiter dicta, the result of the earlier cases, had repeated the expression "essential living rooms", an expression which, as his Lordship had explained, was misleading when taken out of context.

In agreeing with him, the other members of the House could not have intended to replace the statutory language by a rigid test which made the availability of cooking facilities an essential precondition for security of tenure.

That would place a gloss on the statute which was not justified by its language or purpose or the decided cases; and once again revive the heresy, twice previously rejected in the case law, that a room or set of rooms had to possess "all the features essential to the conception of a dwelling house" in order to attract security of tenure.

However the position was relatively straightforward. The first step was to identify the subject-matter of the tenancy agreement.

If that were a house, or part of a house of which the tenant had exclu-

sive possession with no element of sharing, the only question was whether at the date proceedings were brought it was the tenant's home. If so, it was his dwelling.

If the tenancy agreement also granted the right to the shared use of other rooms, the question was whether the accommodation of which he had exclusive possession was his dwelling or only part of it. That depended on the nature and extent of the right and the character of the other rooms.

The right to occupy a living room in common with and at the same time as the landlord was such an invasion of his privacy that Parliament could not be taken to have intended that the tenant should enjoy security of tenure.

For that purpose a kitchen was a living room, at least if it were possible to occupy it, and not merely cook and wash up in it, so that a right to occupy a kitchen, as distinct from a right to make some limited use of its facilities, in common with the landlord would take the tenancy out of the Acts.

The presence or absence of cooking facilities in the part of the premises of which the tenant had exclusive occupation was not relevant.

He would allow the appeal.

Lord Steyn delivered a speech concurring with Lord Bingham and Lord Millett. Lord Hobhouse delivered a speech concurring with Lord Millett.

Solicitors: Alan Edwards & Co, Treasury Solicitor.