

Mr Street granted Mrs Mountford, the right to occupy some rooms for £37 per week, subject to termination by written notice and other conditions.

The question before the courts was whether the agreement was to be considered a lease or a licence.

Traditionally, an occupier of land in return for rent is a tenant providing that that occupier is granted what is known as exclusive possession. A tenant with exclusive possession can exercise the rights of an owner of land albeit temporarily and subject to certain restrictions. But, a licensee lacking exclusive possession cannot call the land his own or be said to own an estate in the land.

If the agreement between Mr Street and Mrs Mountford created a lease, Mrs Mountford acquired a legal estate in land. If the agreement is a licence then Mrs Mountford's right of occupation is not as well protected as a lease.

Lord Templeman was of the view that it is the substance of the contract that matters.

To constitute a tenancy, the occupier must be granted exclusive possession for a fixed or periodic term in return for a premium or periodic payment.

The grant may be agreed orally or in writing or may be inferred where the owner accepts regular payments from the occupier.

If the agreement satisfied all the requirements of a tenancy, then the parties cannot insist that the effect of the agreement is altered by calling it a licence. On the facts, Mrs Mountford having entered into possession and made weekly payments did have a tenancy.

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