

RESIDENTIAL PROPERTY TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

BIR/00FN/RTB/2005/0010

*DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL
ON AN APPLICATION UNDER PARAGRAPH 11(4) OF SCHEDULE 5
TO THE HOUSING ACT 1985*

<u>Tenant:</u>	Mr C Singh
<u>Landlord:</u>	Leicester City Council
<u>Subject property:</u>	12 Harwin Road Leicester LE5 6ED
<u>Date of landlord's notice denying the right to buy:</u>	9 August 2005
<u>Date of application to the Residential Property Tribunal:</u>	25 August 2005
<u>Members of the Tribunal:</u>	Professor N P Gravells MA Mr I D Humphries FRICS Mrs C L Smith
<u>Date of determination:</u>	31 JAN 2006

Introduction

- 1 This is a decision on an application made to the Residential Property Tribunal by Mr C Singh, tenant of the property at 12 Harwin Road, Leicester LE5 6ED ("the subject property") under paragraph 11(4) of Schedule 5 to the Housing Act 1985 ("the 1985 Act") for a determination as to whether the exception to the right to buy set out in paragraph 11 of Schedule 5 (property particularly suitable for occupation by elderly persons) applies to the subject property.
- 2 The landlord is the Leicester City Council.
- 3 The tenant gave notice to the landlord under section 122 of the 1985 Act, claiming to exercise his right to buy the subject property. The landlord served on the tenant a notice in reply (form RTB2), dated 9 August 2005, under section 124, denying the tenant's right to buy on the ground set out in paragraph 11 of Schedule 5. The tenant subsequently made the present application.
- 4 Neither party requested a hearing.

Subject property

- 5 The Tribunal inspected the subject property on 25 January 2006 in the presence of the tenant.
- 6 The subject property is a mid-terrace bungalow of traditional brick and tile construction (with a flat felt-roofed entrance porch). The accommodation comprises entrance porch, reception room, inner hall, bedroom, kitchen, combined bathroom and wc. There is a step up from the front garden to the entrance porch and a small step down from the kitchen to the rear garden. The property has the benefit of double glazing, gas-fired central heating with radiators in all rooms (except the entrance porch) and a gas fire in the reception room. There are two integral stores to the rear of the property. There are gardens to the front and rear of the property.
- 7 The tenant has installed a heater in the entrance porch, a shower over the bath and fitted wardrobes in the bedroom.
- 8 The property is located on Harwin Road. Access to the property is by means of pathway running between Ethel Road and St Denys Road. Access to the front door is by means of a concrete path from the pathway through the front garden. There are no steps or significant gradients on the pathways in the immediate vicinity of, and providing access to, the subject property.
- 9 The nearest shops selling food are located in Evington, approximately 700 metres from the subject property.
- 10 The nearest bus stop is on Goodwood Road, approximately 300 metres from the subject property, from which there are frequent bus services to Leicester city centre.

The applicable law

- 11 The material parts of paragraph 11 of Schedule 5 to the 1985 Act provide as follows:

- (1) The right to buy does not arise if the dwelling house –
- (a) is particularly suitable, having regard to its location, size, design, heating system and other features, for occupation by elderly persons, and
 - (b) was let to the tenant or a predecessor in title of his for occupation by a person who was aged 60 or more (whether the tenant or a predecessor or another person).
- (2) In determining whether a dwelling is particularly suitable, no regard shall be had to the presence of any feature provided by the tenant or a predecessor of his.

...

- (6) This paragraph does not apply unless the dwelling-house concerned was first let before 1 January 1990.

- 12 The Office of the Deputy Prime Minister (ODPM) has issued Circular 7/2004 (Right to Buy: Exclusion of Elderly Persons' Housing), which sets out the main criteria to be taken into account in determining the particular suitability of an individual dwelling-house for occupation by elderly persons. The Tribunal is not bound by the circular, deciding each case on its merits, but it does have regard to the criteria contained in the circular as a guide.

Submissions of the parties

- 13 During the course of the inspection of the subject property, the tenant raised a number of arguments in support of his claim to exercise the right to buy:
- (a) He asserted that the nearest shop selling food is the Waitrose supermarket on Ethel Road at a distance of one mile from the subject property; and that the nearest bus stop is at the same location. (These assertions conflicted with the information provided by the tenant in his application to the Tribunal.)
 - (b) He seemed to assert that the guidance notes published by the Residential Property Tribunal Service stated that paragraph 11 of Schedule 5 only apply where the property has more than two bedrooms.
 - (c) He asserted that the landlord has sold neighbouring properties to the tenants.
- 14 The Tribunal had received written representations from the landlord; and these were copied to the tenant. In those representations, the landlord reiterated its view that the conditions set out in paragraph 11 of Schedule 5 to the 1985 Act, as elaborated in ODPM Circular 7/2004, were satisfied; and that the right to buy had therefore been properly denied on the ground that the property was particularly suitable for occupation by elderly persons.

Determination of the Tribunal

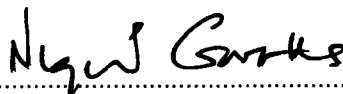
- 15 The Tribunal is conscious that the landlord did not have the opportunity to respond to the arguments raised by the tenant during the course of the inspection of the subject property. However, the Tribunal is satisfied that the landlord was not thereby prejudiced:

- (a) The Tribunal was able to check for itself the distances to the nearest shop selling food and to the nearest bus stop. Its findings on those issues are indicated in paragraphs 9 and 10 above.
- (b) The Tribunal finds that the tenant has misunderstood the relevant section of the guidance notes: paragraph 11 of Schedule 5 does not apply where the property has more than two bedrooms.
- (c) The Tribunal holds that a claim to exercise the right to buy has to be considered in relation to the subject property on its own merits at the time of the claim. It follows that policy and/or sales decisions in relation to other properties are not relevant to the determination of the claim in relation to the subject property.

The Tribunal therefore places no weight on the arguments raised by the tenant during the course of the inspection of the subject property.

- 16 On the evidence of the landlord's letting register, the Tribunal finds that the subject property was first let before 1 January 1990 and therefore that the condition in paragraph 11(6) of Schedule 5 is satisfied.
- 17 It was not disputed that the tenant was aged 64 when the tenancy was granted. Although the wording of paragraph 11(1)(b) of Schedule 5 seems to require no more than that objective fact, paragraph 18 of ODPM Circular 7/2004 states that, in the view of the Secretary of State, the condition is not met unless the landlord knew that the tenant (or some other person occupying the property with the tenant) was aged 60 or more when the tenancy was granted. However, it is not necessary for the Tribunal in the present case to decide whether such knowledge is required on the part of the landlord. Since the tenant in the present case indicated his date of birth on his housing application, the Tribunal finds that the landlord did know that the tenant was aged 60 or more when the tenancy was granted.
- 18 The principal matter for the Tribunal to determine is whether the condition in paragraph 11(1)(a) of Schedule 5 is satisfied, namely that the subject property is particularly suitable for occupation by elderly persons.
- 19 The Tribunal finds that the subject property (as provided by the landlord and disregarding any features provided by the tenant) satisfies all the relevant criteria set out in paragraph 12 of ODPM Circular 7/2004:
 - There is easy access on foot to the subject property.
 - The accommodation is on one level save for the two separate steps referred to in the description of the subject property (paragraph 6 above).
 - There are no more than two bedrooms.
 - The heating arrangements function reliably, provide heat to at least the living room and one bedroom and may safely be left on overnight.
 - The subject property is located reasonably conveniently for shops and public transport, with both the nearest shop selling basic food items and the nearest public transport stop within the stated maximum distance of 800 metres.
- 20 The Tribunal finds that there are no other relevant factors that would support the conclusion that the subject property is not particularly suitable for occupation by elderly persons.

- 21 The Tribunal therefore finds that the subject property is particularly suitable for occupation by elderly persons within the meaning of paragraph 11(1)(a) of Schedule 5.
- 22 Paragraphs 15 and 17 of ODPM Circular 7/2004 state that, as a matter of good practice, it is recommended that landlords should advise any tenant if they consider that a particular property is likely to be exempt from the right to buy under paragraph 11 of Schedule 5. The landlord states that at the time of the granting of the tenancy, it was its policy to advise tenants that they would be likely to be refused the right to buy by virtue of paragraph 11 of Schedule 5. The tenant did not claim that he had not been advised in accordance with that policy.
- 23 The Tribunal therefore determines that the landlord is entitled to rely on paragraph 11 of Schedule 5 to the 1985 Act to deny the tenant the right to buy the subject property.

Signed 

Date 31 JAN 2006

Professor Nigel P Gravells
Chairman