

THE RESIDENTIAL PROPERTY TRIBUNAL

PARAGRAPH 11 OF SCHEDULE 5 TO THE HOUSING ACT 1985  
(AS AMENDED)

Applicant Tenant:- Doris Lewis  
(Representative:- Ruby Hayles)

Respondent Landlord:- Birmingham City Council

Property:- 113, Sheldon Heath Road, Birmingham B26 2DP

MEMBERS OF THE TRIBUNAL

Mr A.J.ENGEL (M.A.Hons.) - Chairman  
Mr R.COOPER F.R.I.C.S.  
Mrs C.SMITH

**DETERMINATION**

**The Landlord is entitled to rely on paragraph 11 of Schedule 5 to the Housing Act 1985 (as amended) to deny the Tenant the right to buy the property.**

**REASONS**

**Background**

1. On 7<sup>th</sup> August 2006, the Landlord received the Tenant's written notice - pursuant to Section 122 of the Housing Act 1985 (as amended) [The Act] claiming the right to buy the property.
2. By written notice, dated 5<sup>th</sup> September 2006, the Landlord denied the Tenant's right to buy the property on the ground that paragraph 11 of Schedule 5 to the Act applied.
3. By written application, received by the Tribunal on 2<sup>nd</sup> November 2006, the Tenant applied to the Tribunal for a determination as to whether the exception for a dwelling house particularly suitable for elderly persons applied.
4. By letters, dated 28<sup>th</sup> November 2006, the parties were informed that a Tribunal Chairman had decided that the matter could be decided without an oral hearing.

Neither party requested an oral hearing. Accordingly, the Tribunal has proceeded to determine the matter without an oral hearing.

### **The Law**

5. The material part of paragraph 11 of Schedule 5 to the Act provides:-

“11. (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 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 in title of his.

.....

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

### **Written representations**

6. Written representations were made by the Landlord and the Tenant.

### **Inspection**

7. The Tribunal inspected the property on 24<sup>th</sup> January 2007 in the presence of the Tenant.

8. It is a purpose built ground floor flat comprising one bedroom, one living room, a kitchen and a bathroom/w.c.. The lay-out is good and it has double glazing and gas-fired central heating. There are no steps to the front door – which has an access ramp. There is one step out of the rear door into a (shared) garden.

9. The flat is located in a quiet residential area . There are shops within a reasonable walking distance and there is a bus stop nearby.

## **Findings**

- 10.. We accept the evidence of the Landlord and we find as a fact that the property was first let before 1<sup>st</sup> January 1990.
11. We accept the evidence of the Tenant and we find as a fact that she was 70 years of age when the present tenancy commenced in December 1996.
12. There was no evidence of any feature provided by the Tenant or a predecessor in a title.

## **Conclusions**

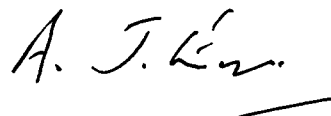
13. We conclude:-

- (i) The property is particularly suitable, having regard to its location, size, design, heating system and other features for occupation by elderly persons;
- (ii) The property was first let before 1<sup>st</sup> January 1990;
- (iii) The property was let to the Tenant for occupation by a person who was aged over 60 years.

## **Information**

14. The Tenant complains that she has been a tenant of the Landlord for many years and when her tenancy was transferred to this property, she was not informed that her "right to buy" might be adversely affected.
15. However, there is no evidence that the Landlord made any representation on this topic and in the absence of such evidence, the Tenant has no legal remedy.

SIGNED



(A.J.ENGEL - Chairman)

DATED – 26<sup>th</sup> January 2007