

**RESIDENTIAL PROPERTY TRIBUNAL  
SOUTHERN RENT ASSESSMENT PANEL &  
LEASEHOLD VALUATION TRIBUNAL**

Case No. CHI/45UB/RTB/2006/0001

Re: 8 White Lion Court, Ship Street, Shoreham-by-Sea, West Sussex, BN43 5DY

**Between:**

Mrs Elizabeth Mary Cunningham  
("the Applicant/Tenant")

and

Adur District Council  
("the Respondent/Landlord")

Members of the Tribunal: Mr J.B. Tarling, Solicitor, MCMI (Chairman)

Mr R.A. Wilkey, JP FRICS FInstCPD

Hearing: 3<sup>rd</sup> April 2006

Decision: 7<sup>th</sup> April 2006

**DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL**

**In the matter of an Application Paragraph 11 of Schedule 5 of the  
Housing Act 1985 (as amended)**

**(Appeal against the Refusal to be allowed the Right to Buy)**

**Decision**

**The Tribunal REFUSES THIS APPEAL and the Applicant/Tenant is  
NOT to be allowed the Right to Buy**

**Jurisdiction**

1. Section 181 of the Housing Act 2004 provides that determinations to be made under Schedule 5 of the Housing Act 1985 shall in future be made by a Residential Property Tribunal instead of the Secretary of State. By the Housing Act 2004 (Commencement No. 4 and Transitional Provisions)(England) Order 2005 the provisions of Section 181 of the Housing Act 2004 came into force on 4<sup>th</sup> July 2005.
2. Paragraph 11 of Schedule 5 of the Housing Act 1985 provides that:  
    “(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 or another person)

(4) If an application for the purpose is made by the tenant...before the end of the period of 56 days beginning with the service of the landlords notice under Section 124 of the *Housing Act 1985*, the question shall be determined by the *Residential Property Tribunal*."

3. In this case the Applicant/Tenant had served a Notice under Section 122 of the Housing Act 1985 ("the 1985 Act") claiming to exercise the right to buy which was received by the Respondent/Landlord on 31<sup>st</sup> January 2006. The Respondent/Landlord had served a Notice under Section 124 of the 1985 Act (Form RTB2) denying the right to buy on 1<sup>st</sup> February 2006. In Part B of that Notice the Respondent/Landlord denied the right to buy to Mrs Angela Elizabeth Holmes (the daughter of the Applicant/Tenant) and Jason Holmes (the Grandson of the Applicant/Tenant) as neither of them have lived at the property with the Applicant/Tenant for the last twelve months. In Part C of the Form the Respondent/Landlord denied the right to buy as (*inter alia*) the property is particularly suitable for occupation by elderly persons. The Applicant/Tenant made an Application to the Residential Property Tribunal ("the Tribunal") for a determination under Paragraph 11 of Schedule 5 of the 1985 Act (as amended) on 6<sup>th</sup> February 2006, which was within 56 days of the date of the Landlords Notice under Section 124 of the 1985 Act.
4. The Tribunal directed that the matter should be decided at a hearing following an inspection of the property and arrangements were made for such an inspection and hearing.

#### **Inspection**

5. The Tribunal carried out an inspection of the property and the surrounding area on 3<sup>rd</sup> April 2006.
  - (i) **The Property.** The property is a ground floor one bedroom flat in the centre of Shoreham-by-Sea, West Sussex. It is part of a terrace of three-storey Buildings with a number of similar Flats on the ground floor and the upper two floors were two-storey maisonettes having an access at ground floor level. The accommodation comprises one bedroom, one living room, a bathroom (with bath and wash-basin) and WC, and a Kitchen. All the accommodation is on one level. The windows and front door are double-glazed. A gas-fired combination boiler provides central heating and hot water. There are radiators in the living room and bedroom. The accommodation is quite small and is suitable for no more than two occupiers.
  - (ii) **The surrounding area.** The property is situated on level ground with a communal tarmac car parking area leading to the pavements in Ship Street. A short distance away there is a parade of local shops, which included a supermarket selling food and other domestic requirements, a butcher, a baker, a Post Office, Newsagents and a chemist and other local shops. There were bus-stops a short distance away on level ground which served bus routes direct to Brighton and Worthing. The property was also a short walk on level ground from the Railway Station, Library and Community Centre.

## **Hearing**

6. A Hearing was held on 3<sup>rd</sup> April 2006 at Maritime House, Hove which was attended by Mrs Cunningham (the Applicant), assisted by her Daughter Mrs Holmes. The Respondent/Landlord was represented by Mr J. Ashton, Solicitor and Mrs L. Withenden, a Leasehold Property Administrator. As a preliminary point the Tribunal went through the Application and supporting documents and it was accepted by the Applicant/Tenant that as Mrs Angela Holmes and Jason Holmes did not currently reside, and had not resided with the Applicant/Tenant throughout the period of twelve months ending with the giving of the Notice (Section 123 (2(a)) of the 1985 Act they would not have the right to buy. It was accepted that Mrs Angela Holmes (as a daughter) and Jason Holmes (as a Grandson) fell within the meaning of a "members of a persons family" as set out in Section 186 of the Act.
7. At the request of both parties the Tribunal was then asked to proceed to determine whether the property was particularly suitable for occupation by elderly persons.
8. **The Applicant/Tenants evidence**  
Mrs Cunningham and Mrs Holmes, on her behalf, addressed the Tribunal and said that a number of other people who were not elderly were occupying adjoining Flats in the Block. For this reason they could see no reason why Mrs Cunningham should not have the right to buy. The Chairman explained that the Tribunal had to follow the wording of the Schedule 5 Paragraph 11 (1)) of the 1985 Act, and had to decide the matter having regard to whether the property is particularly suitable, having regard to the location, size, design, heating system, and other features. The Chairman also explained that the Act did not require the Tribunal to consider the nature of the occupiers of adjoining properties and whether or not they were elderly. Mrs Holmes said she did not agree with the law, but the Chairman pointed out that the Tribunal had to abide by the statutory provisions which had been decided by Parliament.  
The Chairman then went through the various matters which Parliament had referred to in the statutory provisions and asked Mrs Cunningham and her Daughter for their comments regarding the location, size, design, heating system and other features. In all respects they agreed that none of these matters in respect of this property contradicted or disproved the Respondent's view that the flat is particularly suitable for occupation by elderly persons.
9. **The Respondent/Landlords evidence**  
Mr Ashton, Solicitor for the Council, asked Mrs Withenden to confirm that the property is convenient for the Library and Medical Centre, and she confirmed that it is. Mrs Withenden also explained that the reason why the maisonette immediately above the subject property was not let to an elderly person, was because there was no lift in the Building and the Maisonette was on two floors above the ground floor, and was accessed by one flight of steps from the ground floor and with another flight of stairs to the second floor which made it unsuitable for the elderly. This evidence was not challenged by Mrs Cunningham or Mrs Holmes.

#### 10. Consideration

Following the hearing the Tribunal retired to consider the matter. First of all they considered the evidence that had been produced by both parties.

**(i) The Applicant/Tenants evidence** The Applicant/Tenant had set out in the Application Form to the Tribunal the reasons why she considered the property to be unsuitable for occupation by the elderly. In her Application Form she had said "The Flat is not unsuitable for the elderly.." and went on to say that other five flats in the Block were occupied by two retired tenants, a teenager, a lady "40 ish" and a young girl. At the hearing she had agreed that in respect of the matters such as the location, size, design, heating system and other features, none of these matters in respect of this property contradicted or disproved the Respondent's view that the flat is particularly suitable for occupation by elderly persons. She was unable to point to any matter, other than the nature of the occupiers of the adjoining properties that might have a bearing on whether it is particularly suitable for occupation by elderly persons.

**(ii) The Respondent/Landlords evidence**

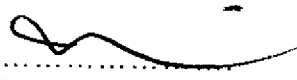
The Respondent/Landlord had confirmed all the various matters as set out above and for this reason maintained that the property was particularly suitable for occupation by the elderly and on those grounds the Tribunal should refuse the right to buy.

11. There appeared to very little dispute between the parties as to the extent or description of the accommodation and surrounding area and the facts relating to the matters such as the location, size design, heating system, and other features as set out in the Act. The members of the Tribunal had inspected the property and the results of their inspection are set out in Paragraph 5 above. They then turned their attention to making a decision as to whether the property was particularly suitable for occupation by the elderly. They also considered the Guidance Note ODPM Circular 7/2004, which had been issued in December 2004 by the ODMP to give guidance to those persons charged with making decisions on such appeals. Such Guidance is not binding on the Tribunal but is sometimes helpful in assisting it in making its decisions. Whilst that Guidance Note was of assistance in setting out matters of detail, e.g. the number and size of steps etc, it fails to give any reasoned or authoritative interpretation of the words "particularly suitable".
12. The Residential Property Tribunal membership includes lawyers and valuers who are experienced professionals who have been appointed because of their expertise in dealing with residential property. The Tribunal is an independent Tribunal, which is charged with making Decision on a wide variety of applications under a large number of Housing and Landlord and Tenant items of legislation. It performs its tasks as a judicial function and in doing this it frequently has to interpret legislation. In this case the Tribunal's duty is to interpret the words "particularly suitable for occupation by the elderly."

### Decision

13. In making decisions in these kinds of Applications the Tribunal decides each individual case on its own merits. This is usually done after carrying out a full inspection of the inside and outside of the property and the surrounding area, as it had done in this case. Using their local and expert knowledge and experience the Tribunal decided that in this case the location of the property in particular, in the centre of the small town of Shoreham-by-Sea, on level ground, near to shops and other facilities, where there was possibly a scarcity of properties of this type, made this property particularly suitable for occupation by elderly persons.
14. For the reasons given above the Tribunal HEREBY REFUSES THE APPEAL against the Respondent/Landlords decision to refuse the right to buy and the Applicant/Tenant is to be refused to be allowed the Right to Buy.

Dated this 7<sup>th</sup> day of April 2006

*J.B.Tarling* 

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John B. Tarling  
(Lawyer/Chairman)