

RESIDENTIAL PROPERTY TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

BIR/00FY/RTB/2006/0020

*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 M N Kahut
<u>Landlord:</u>	Nottingham City Council
<u>Subject property:</u>	12 Scalford Drive Wollaton Park Nottingham NG8 1EE
<u>Date of landlord's notice denying the right to buy:</u>	12 October 2006
<u>Date of application to ODPM/ Residential Property Tribunal:</u>	2 November 2006/14 November 2006
<u>Members of the Tribunal:</u>	Professor N P Gravells MA Mr K G Bloor FRICS Mrs K Bentley
<u>Date of determination:</u>	07 FEB 2007

Introduction

- 1 This is a decision on an application made to the Residential Property Tribunal by Mr M N Kahut, tenant of the property at 12 Scalford Drive, Wollaton Park, Nottingham NG8 1EE ("the subject property"). The application, submitted initially to the former Office of the Deputy Prime Minister (2 November 2006) and subsequently to the Residential Property Tribunal (14 November 2006), is 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 Nottingham 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 12 October 2006, 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 2 February 2007 in the presence of the tenant.
- 6 The subject property is a semi-detached bungalow with rendered elevations and tiled roof. The accommodation comprises hall, two reception rooms, two bedrooms, kitchen and combined bathroom and wc. There are no steps in the property. The property has the benefit of double-glazing and gas-fired central heating, with radiators in all rooms and a gas fire in the front reception room. (The gas fire and the radiators in the bedrooms and the rear reception room were installed by the landlord; the radiators in the hall, front reception room and kitchen were installed by the tenant.) There are gardens and car-standing space to the front of the property and gardens to the rear of the property.
- 7 The tenant has refitted the kitchen and (in part) the bathroom.
- 8 The subject property is located on Scalford Drive. Access to the front door is across the car-standing space and along a path in front of the bungalow. There is a continuous handrail from the road to the front door.
- 9 There are no significant gradients on the paths and pavements in the immediate vicinity of, and providing access to, the subject property.
- 10 The nearest shop selling basic food items is approximately 100 metres from the subject property.
- 11 The nearest bus stop is approximately 100 metres away, from which there are bus services into Nottingham city centre significantly more frequently than stated by the tenant.

The applicable law

- 12 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.
- 13 The Office of the Deputy Prime Minister (ODPM) 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.

Written representations

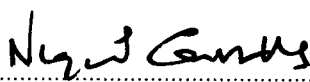
- 14 The Tribunal received written representations from the tenant and the landlord; and these were copied to the other party.
- 15 The tenant stated that the landlord had let properties in Wollaton Park similar to the subject property to tenants who were neither elderly nor disabled.
- 16 The landlord stated its view that the conditions set out in paragraph 11 of Schedule 5, 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 subject property was particularly suitable for occupation by elderly persons.

Determination of the Tribunal

- 17 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.
- 18 It was not disputed that the tenant was aged 74 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 landlord's Housing Management Information record for the subject property includes the tenant's date of birth, the Tribunal finds that the landlord did know that the tenant was aged 60 or more when the tenancy was granted.

- 19 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.
- 20 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 and there are no external or internal steps.
 - 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 well within the stated maximum distance of 800 metres.
- 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 Paragraph 16 of ODPM Circular 7/2004 refers to the obligation on social landlords to publish information to tenants on the effect of paragraph 11 of Schedule 5 and on the right to appeal against a denial of the right to buy pursuant to that paragraph. Paragraph 17 of ODPM Circular 7/2004 states 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 provided the Tribunal with a copy of the documentation on the right to buy that it provides to tenants generally. There was no evidence before the Tribunal as to whether the landlord had given specific advice to the tenant of the subject property; but in any event the Tribunal holds that failure to follow such good practice does not mean that the conditions in paragraph 11 of Schedule 5 are not satisfied.
- 23 In response to the tenant's argument that the landlord had let properties in Wollaton Park similar to the subject property to tenants who were neither elderly nor disabled, the Tribunal holds that letting decisions in relation to other properties are not relevant to the determination of the right to buy claim in relation to the subject property. In any event, 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.
- 24 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 **07 FEB 2007**

Professor Nigel P Gravells
Chairman