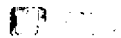


**RESIDENTIAL PROPERTY TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL**

BIR/00FY/RTB/2005/0003

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

<u>Tenant:</u>	Mrs M Kaur
<u>Landlord:</u>	Nottingham City Council
<u>Subject property:</u>	54 Sutton Passeys Crescent Wollaton Nottingham NG8 1BU
<u>Date of landlord's notice denying the right to buy:</u>	15 June 2005
<u>Date of application to ODPM/ Residential Property Tribunal:</u>	6 July 2005/27 July 2005
<u>Members of the Tribunal:</u>	Professor N P Gravells MA Mr N R Thompson FRICS Mrs S Seth
<u>Date of determination:</u>	

The logo of the Residential Property Tribunal, featuring a stylized 'R' and 'P' inside a square frame.

Introduction

- 1 This is a decision on an application made to the Residential Property Tribunal by Mrs M Kaur, tenant of the property at 54 Sutton Passeys Crescent, Wollaton, Nottingham NG8 1BU ("the subject property"). The application, submitted initially to the Office of the Deputy Prime Minister (6 July 2005) and subsequently to the Residential Property Tribunal (27 July 2005), 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 her right to buy the subject property. The landlord served on the tenant a notice in reply (form RTB2), dated 15 June 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 21 October 2005 in the presence of the tenant and her daughter.
- 6 The subject property is a semi-detached bungalow of traditional brick and tile construction. The accommodation comprises an entrance hall, two reception rooms, two bedrooms, kitchen and combined bathroom and wc. There is a small step down from the rear reception room to the kitchen. The property has the benefit of gas-fired central heating with radiators in all rooms and a gas fire in the front reception room. There are gardens to the front and rear of the property.
- 7 The tenant has installed double glazing throughout the property; she has refitted the kitchen and bathroom; and she has fitted exterior lighting.
- 8 The property is located on the corner of Sutton Passeys Crescent and Selston Drive. Access to the front door is by means of a path from either road to the front gate and then through the front garden. There are two steps up from the garden path to the front door and there is no handrail.
- 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 300 metres from the subject property.
- 11 The nearest bus stop is approximately 500 metres away, from which there are frequent bus services into Nottingham city centre.

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) 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.

Written representations

14 The Tribunal received written representations from the tenant and the landlord; and these were copied to other party.

15 The tenant did not seek to question the particular suitability of the subject property for occupation by elderly persons. Rather she stated that she wished to buy the property so as to secure the future for her daughter and grandchildren. She explained that her daughter had various health problems; that the daughter and her children lived with the tenant; that the daughter assisted the tenant in the house; and that the children were able to walk to the local school.

16 The landlord simply reiterated 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 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 63 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 her date of birth on her housing application, 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, notwithstanding the two steps up from the garden path to the front door and the absence of any handrail.
- The accommodation is on one level save for one small step down from the rear reception room to the kitchen.
- 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.

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.

21 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. There was no evidence on this issue before the Tribunal; 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.

22 Although the Tribunal fully understands the reasons stated by the tenant for wishing to exercise the right to buy, the Tribunal finds that such reasons constitute personal circumstances of the tenant, which the Tribunal is precluded from taking into account.

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 Nigel Gravells

Date 11/11/2011

Professor Nigel P Gravells
Chairman