

RESIDENTIAL PROPERTY TRIBUNAL

Property : 63 Primley Lane,
Sheering,
Nr. Bishop's Stortford,
Herts. CM22 7NH

Appellant : Derek Robert Morris

Respondent : Epping Forest District Council

Case number : CAM/22UH/RTB/2005/0004

Date of Application : 4th September 2005

Type of Application : Appeal against denial of tenants' right to buy
(Schedule 5 Housing Act 1985 as amended ("the 1985 Act"))

The Tribunal : Mr. Bruce Edgington (lawyer chair)
Mr. David Brown FRICS MCI Arb

DECISION

Introduction

1. The Appellant has applied to the Respondent to exercise his right to buy the property which is presently let by the Respondent to the Appellant.
2. Although the Tribunal has not seen a copy of the notice refusing to Appellant's right to buy, it is assumed that such notice was given and that the grounds given for such refusal were (a) that the property was first let before 1st January 1990, (b) that it is particularly suitable for occupation by elderly persons and (c) was let for occupation by a person aged 60 or more.
3. This appeal has been lodged within the statutory period allowed for such appeals.

The Law

4. The principle Statute which sets out the qualifying conditions to the right to buy is the 1985 Act. Schedule 5 deals with the cases where the right to buy does not apply and the Respondent relies upon Paragraph 11 which says:-

- 11(1) The right to buy does not arise if the dwellinghouse*
 - (a) is particularly suitable, having regard for 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 years 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*
- (3) ...(not applicable to this appeal).*
- (4) “*
- (5) “*
- (6) This paragraph does not apply unless the dwellinghouse concerned was first let before 1st January 1990*

The Facts of This case

5. In his application to this Tribunal the Appellant states that the property was first let to him in May 1990 on which date the age of the oldest person living at the property was 60. He describes the property as being a bungalow close to shops and a bus to Harlow. In a letter dated 10th August and apparently signed on behalf of the Appellant, he says “Whilst I do not, and never have, disputed that my property may be suitable for occupation by elderly persons, this is not the basis of my appeal. My defence of my application (sic) is that the property adjacent to mine (number 65 Primley Lane) is identical and has, I believe, been sold under identical circumstances to my own.”
6. A copy of the application form was sent to the Respondent for its observations. It was asked for the date when the property was first let to any tenant. The answer is 24th May 1965.

Procedure

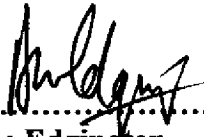
7. In view of the facts set out above, the Tribunal took the view that this case was suitable for determination on the papers without a hearing. By a letter dated 27th September

2005, the parties were informed of this and were told, in accordance with Regulation 8 of **The Residential Property Tribunal (Right to Buy Determinations) Procedure (England) Regulations 2005** that a decision would not be made before 25th October 2005.

8. As the Appellant did not respond to that letter, a further letter was written on the 17th October confirming that the President of the Tribunal would review the papers again after the 25th October. Still nothing was heard and the Tribunal therefore wrote to the Appellant stating that the date for a decision was being put off until the 8th November to enable the Appellant to make any further comments. He did respond to that letter on 2 occasions. The first letter was undated and received on the 31st October. The second was dated 30th October and was received on 3rd November. Both letters simply repeated the previous allegation that the Respondent has sold 65 to the elderly tenant, and it is therefore simply unfair not to sell this property to the Appellant.

Decision

9. This appeal is refused. It is clear to the Tribunal from the description of the property and the proximity of amenities, that this property is particularly suitable for occupation by elderly persons. It was first let before the 1st January 1990 and has clearly been let for occupation by the Appellant who was 60 at the time of the letting to him. Thus, all the criteria in paragraph 11 of Schedule 5 of the 1985 Act are satisfied.
10. The Tribunal does have some sympathy with the point made by the Appellant that it would seem unfair, on the face of it, for a similar property in the locality to have been sold under the right to buy scheme. The Respondent says that this property was let to someone aged 59 "due to her disabilities and the property could therefore not be retained when she applied to purchase some years later". However, even if that transaction did satisfy all the criteria set out above, this Tribunal has no power to allow an appeal simply on the ground that the landlord did not refuse the right to buy in another case.


.....
Bruce Edgington
Chair
11.11.05