

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property : 3 Church Lane
Dane End
Nr. Ware
Herts. SG12 0NJ

Appellant : (1) Mr. A.M. Sugden
(2) Mrs. S. Sugden

Respondent(s) : Stort Valley Housing Association

Case number : CAM/26UD/RTB/2005/0001

Date of Application : 20th June 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 Appellants have applied to the Respondents to exercise their right to buy the property which is presently let by the Respondent to the Appellants.
2. By notice to the Appellants dated 5th May 2005, the Respondent refused the right to buy stating (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 8 week 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 their application to this Tribunal the Appellants state that the property was first let to them on the 6th December 1993 on which date the age of the oldest person living at the property was 59. They also set out reasons why, in their view, the property is not suitable for occupation by elderly persons.
6. A copy of the application form was sent to the Respondent for its observations. It was asked for the specific date when the property was first let to any tenant. The answer is “1995”. No comment was raised as to the assertion by the Appellants that the property was first let to them on 6th December 1993 and that the oldest person in the property at that time was 59.
7. In view of this the Tribunal chair caused a letter to be written to the Respondent on the 19th September 2005 pointing out the facts asserted by the Appellants and asking whether the Respondent has any other information which would help the Tribunal decide whether the denial of the Appellant’s right to buy was sustainable. A response was requested within 7 days but no response was received.

Procedure

8. 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 letter dated 9th 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 7th October 2005.
9. By a written notice dated 20th September 2005 the Appellants stated that they wanted a hearing. However, during the course of a telephone conversation with them on the 7th October 2005 they stated that they no longer wanted a hearing.

Decision

10. This appeal succeeds. The Respondent has been unable to produce any evidence to suggest that the property was let to any tenant before 6th December 1993. Further, the Respondent has not been able to produce any evidence to suggest that the property was let to anyone for the purpose of occupation by someone who was aged 60 or over. It therefore follows that the Tribunal does not need to consider the other matters raised by the Appellants.
11. The Respondent therefore cannot refuse the Appellants' right to buy the property on the ground set out in its refusal notice.

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Bruce Edgington
Chair
10/10/05