



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : MAN/00CG/RTB/2023/0012

Property : 82 Verdon Street, Sheffield, S3 9QR

Applicant : Ms Noora Arte Elmi
Assisted by : Mr Salaah Ali

Respondent : Sheffield City Council

Type of Application : Right To Buy a Dwelling, Housing Act 1985,
Schedule 5, Paragraph 11, As Amended By The
Housing Act 2004, Section 181.

Tribunal Members : Judge C. P. Tonge, LLB, BA.
Mrs S. A. Kendall, BSc, MRICS.

Date of Decision : 20 December 2023

DECISION

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Application and Background

1. Ms Noora Arte Elmi, "the Tenant" of 82 Verdon Street, Sheffield, S3 9QR gave notice under section 122 of the Housing Act of 1985 "the Act" to "the Landlord", Sheffield City Council, of her intention to exercise her right to buy her dwelling.
2. The Council then served a notice (form RTB 2) dated 12 July 2023 on the Tenant under Section 124 of the Act denying the Tenant's right to buy on the grounds set out in paragraph 11 of Schedule 5 of the Act.
3. By an application that is not dated but is accepted by the Tribunal as having been received within the 56 day time limit, the Tenant applied to the First-tier Property Tribunal under paragraph 11(4) of Schedule 5 of the Act for a determination as to whether the grounds set out in paragraph 11 are satisfied.
4. The Tenant's application was copied to the Landlord by the Tribunal. In reply the Landlord served a notice, dated 29 September 2023, indicating an intention to oppose the Tenant's appeal.
5. The Tribunal has received written representations for the Landlord and Tenant and these have been copied to the other party. The Tenant's representations are contained within the application form and a document entitled 'Situation of my house' (dated 6 October 2023), exhibiting a long list of properties sold within the Burngreave area of Sheffield in the preceding two years and referring to the fact that the Respondent has 27 properties in that area that are reserved for elderly persons being part of the Crabtree Grange Scheme. Also exhibited is a letter from the Respondent's Home Ownership Team (dated 24 July 2019) referring to an offer to sell the property to the Tenant, made on 29 April 2019. There is a further email relating to an attempt to carry out repairs at the property with a screen shot of a mobile telephone, and a page of Tenant's submissions that is undated.
6. The Respondent's representations are contained in documents dated 29 September 2023 and an email responding to the Applicants submissions relating to the prior agreement to sell this property.

The Property

7. The Tribunal inspected the property and surrounding area commencing at 11.30 am on 10 November 2023. The Tenant was present but did not take part in the inspection as such because of a language barrier. However, Mr Salaah Ali, the son of the Tenant had arranged to be present so that he could assist the Tribunal during the inspection. There was a partial language

barrier with Mr Salaah Ali, but the Tribunal was able to understand what he said sufficiently for the inspection to take place. The Respondent was represented by Mr Andrew Routley (Home Ownership Team Leader) and Mr Richard Borrill (Home Ownership Revenues Officer).

8. The property is part of a large council development and is a ground floor flat contained within a purpose built block of flats on relatively flat ground. There is one step at the common entrance to the building with a two inch rise. The common entrance has an intercom door entry system.
9. The property has two bedrooms, a storeroom, a wet room containing a shower, toilet and wash basin, a living room and a kitchen. The Tribunal's attention was brought to the drain in the centre of the floor of the wet room because there is a pool of water standing above the drain, indicating that the drain is not functioning correctly. Salaah Ali stated that this fault had been reported to the Respondent in September this year but had not yet been fixed. This fault will result in the pooling of water on the wet room floor when the shower in that room is used and if that is not cleared away the pool of water may make access to the toilet more difficult than it otherwise would be.
10. Salaah Ali brought an area of floor to our attention claiming that it is damp, lifting the carpet and underlay for better inspection. All present inspected the floor at this point. The Tribunal could not feel any damp. There is a significant amount of condensation on a window in the double bedroom.
11. The kitchen is a fitted kitchen installed by the Respondent, the Tenant supplying her own white goods. There is a Vaillant combination gas boiler that works satisfactorily. Central heating radiators are situated in all main rooms.
12. The interior of the property is all on the same level.
13. The Tribunal walked to the nearby Al Sultan Express convenience store and bus stops. The store and bus stops are all situated within a quarter of a mile of the property and are reached along footpaths that are relatively flat and level such that they can easily be walked by a person who is of 60 years of age or over and is able to live independently despite some limitations owing to age. There are frequent bus services to Sheffield City Centre.

The Law

Paragraph 11 of Schedule 5 of The Housing Act 1985 "the Act" provides that:-

- 1) The right to buy does not arise if the dwelling-house

- a) is particularly suitable, having regard to size, design, heating system, and other features, for occupation by elderly persons, and
 - b) was let to the Tenant or 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 in the title of his...
- 6) This paragraph does not apply unless the dwelling house concerned was first let before the 1st day of January 1990.

Paragraph 11 of the Circular from The Office Of The Deputy Prime Minister, dated December 2004 defines an elderly person as being a person who is of 60 years of age or over and is able to live independently despite some limitations owing to age.

The hearing

14. A hearing took place on 23 November 2023, commencing at 1 pm using the Tribunal's video platform. The tenant was present assisted again by her son Salaah Ali. Ms Haweya Ismail, a Somali interpreter was present. The Tribunal could see that the representatives of the Respondent, Mr Andrew Routley (Home Ownership Team Leader) and Mr Richard Borrill (Home Ownership Revenues Officer) were present in the video hearing system, but that they could not join the hearing. The Tribunal caused its Video Hearing Officer to assist the Respondent's representatives and waited for an hour and five minutes for them to join the hearing, but without success. The Tribunal decided that it could wait no longer.
15. At that stage the Tribunal heard an application from Salaah Ali to the effect that the hearing should continue in the absence of the representatives of the Respondent. The Tribunal decided that would be entirely unfair and unjust to continue with this hearing in the absence of Mr Routley and Mr Borrill who were being prevented from attending the hearing because of technical difficulties. The Tribunal decided that the hearing would be adjourned to be relisted at Sheffield Magistrates Court on a date to be fixed. The Tenant stated that she did not feel that it was necessary for her to attend the hearing, authorising her son Salaah Ali to represent her at that hearing in her absence.

Second hearing

16. The second hearing took place at Sheffield Magistrates Court on 20 December 2023, commencing at 10 am. Persons present at the hearing were Salaah Ali, the son of the Tenant and representing the Tenant in her pre-arranged absence. Abdirahman Ali, a Somali interpreter to interpret for Mr Salaah Ali.

On behalf of the Landlord, Mr Routley and Mr Borrill (already referred to above).

17. Mr Salaah Ali and Mr Routley gave evidence during the hearing. The Documents referred to above were accepted as part of the case. The representatives of the parties did not need to cross examine each other.
18. Mr Ali stated that his mother took this tenancy because the property that she had occupied prior to this one had become unfit for habitation. The Tenant had thought that if she refused the offer of the tenancy of this flat, she might not be offered another tenancy. The Tenant had spoken to the family moving out of the property and had been told that it was damp.
19. During the hearing it was clarified that at some point before 29 April 2019, the Tenant had applied for the right to buy the property. The Landlord council had accepted that the Tenant did have the right to purchase the property and an offer to sell the property was made on 29 April 2019. That offer made it possible for the Tenant to agree to go ahead with the purchase at a specified price (allowing a discount from the price because of the fact that the tenant is entitled to such a discount with regard to the length of time that she has been a council tenant). A time limit of 12 weeks is imposed on acceptance of this offer pursuant to section 125D Of the Housing act 1985. The offer was not accepted by the Tenant.
20. The Landlord council then sent a letter to the Tenant informing her that she had a further 28 days to accept the offer or the offer would be withdrawn. The Tenant did not respond to this letter either and the offer to sell the property was therefore rescinded.
21. Mr Ali explained that his mother thought that the price being required for purchase of the property was too high so the Tenant had decided to wait a few years with a view to increasing her tenant's discount of the purchase price.
22. Mr Routley explained that this offer to sell the property was made by mistake. The Tenant's right to buy should have been denied because the property is particularly suitable for occupation by elderly persons.
23. There was then a second application to purchase the property in 2021 that was denied on the basis that the property is particularly suitable for occupation by elderly persons.
24. This brings us to the present (third) application to exercise the Tenant's right to buy this property, denied on the basis that the property is particularly suitable for occupation by elderly persons.
25. The issue relating to the drain in the wet room at the property was dealt with, Mr Ali agreeing that the fault has now been repaired.

26. Mr Ali raised the issue that an elderly tenant on the ground floor of the same block of flats that houses the property involved in this case, has been allowed to purchase her flat. Mr Routley stated that there could be many reasons as to why the right to buy that property was not denied. The Tribunal explained to Mr Ali that the Tribunal has to focus on this property and the case before it, what may have happened in relation to other properties is not relevant to this case.

The Issues

27. The Landlord in the form RTB 2, states that the premises had first been let prior to the 1 January 1990. This has not been challenged by the Tenant. The Tribunal therefore determines that the property was first let before 1 January 1990, by the Landlord, to a different tenant.

28. The Applicant's tenancy commenced on 11 February 2016, when the tenant was 79 years of age.

29. The remaining matters for the Tribunal to determine is whether under Paragraph 11(1) (a) of the Act the dwelling house is particularly suitable... for occupation by elderly persons. Included in this issue is the fact that on the day that this Tribunal inspected the property there was a fault with the drain in the shower room permitting water from the shower to pool on the floor of the wet room. It is an agreed fact that this repair issue has now been dealt with and that the drain now works. The Tribunal therefore determines that the faulty drain is not an issue capable of effecting the decision as to whether or not the property is particularly suitable for occupation by elderly persons.

30. Further, what effect does the fact that the Respondent offered to sell the property to the Applicant on 29 April 2019 have on the Respondent's denial of the Tenant's right to buy this property? The Tribunal accepts the evidence of Mr Routley that the offer to sell the property was made by mistake. In any event the offer was not accepted within the time limit allowed and was rescinded. The Tribunal determines that this issue does not now prevent the Landlord from denying the Tenant her right to buy the property.

31. The Tribunal determines that the property itself is particularly suitable for occupation by elderly persons, being persons who are 60 years of age or older and are able to live independently despite some limitations owing to age.

32. The Tribunal decides that the paths to the nearby bus stop and shop can be walked by elderly persons, both Tribunal members undertook that walk and both fall within the definition of elderly persons for the purposes of the Act (see The Law, above). The bus services stopping at the bus stop provide a frequent bus service to Sheffield City Centre.

33. Having regard to all the above, the Tribunal determines that the property is particularly suitable for occupation by elderly persons.

The Decision

34. The requirements of Paragraph 11 (1) (b) of the Act as to date of the first letting and the age of the occupier are met.

35. The flat does provide a home that is particularly suitable for occupation by elderly persons.

36. The Requirements of Paragraph 11 of schedule 5 of the Act are satisfied and Sheffield City Council may rely on those grounds to deny the Applicant her right to buy this flat.

37. Appeal against this Decision is to the Upper Tribunal on a point of law only. Any party wishing to raise an appeal has 28 days from the date that this Decision was sent to the parties to deliver to this First-tier Tribunal an application for permission to appeal, stating the grounds of the appeal, particulars of those grounds and the result that the party seeks to achieve by making the appeal.

Judge Tonge

8 January 2024