



FIRST-TIER TRIBUNAL

SOCIAL SECURITY

District Tribunal Judge O'Hara sitting at Rochdale on 13 January 2014

Appellant: [REDACTED]	Tribunal Ref SC947/13/04285
	NI No [REDACTED]
Respondent: Secretary of State for Work and Pensions	

DECISION NOTICE and STATEMENT OF REASONS

The decision made on 26 April 2013 is set aside.

Whereas the property at [REDACTED] was let as a 2 bedroom property, the appellant has never used one of the rooms as a bedroom and no reduction can therefore be made under Regulation 13B(3) of the Housing Benefit Regulations 2006 as amended.

The case is remitted to [REDACTED] to re-determine the appellant's eligible rent from 1 April 2013 in light of this decision.

STATEMENT OF REASONS

1. In this case the appellant argues that:

1. The property in which he lives is not a two bedroom property and he is not therefore underoccupying his property for the purposes of Regulation B13 of the Housing Benefit Regulations 2006, as amended;
2. The application of the provisions in B13 to the appellant is a breach of his right to peaceful enjoyment of his property insofar as the provision discriminates against disabled claimants of housing benefit. He relies on Article 14 and Article 1 of the First Protocol of the Human Rights Act 1998.

2. The appeal was originally decided on 30 September 2013 without the appellant being in attendance at the hearing, in accordance with his expressed wishes on the Enquiry Form and the Overriding Objective. However, this decision

was set aside following receipt of an application under Regulation 37 of the Tribunal Procedure Regulations. [REDACTED] who was by that time representing the appellant, said that he had been very ill after chemotherapy treatment and had short term memory problems which had caused him to fill in the Enquiry Form as he had. The appellant also wrote saying that he wanted to have the opportunity to present submissions from [REDACTED]. It was decided that the interests of justice required the decision to be set aside and a new hearing was directed.

3. I have today heard submission from Ms [REDACTED] from [REDACTED] and Ms [REDACTED] from [REDACTED] CAB. The appellant did not attend the hearing, having been diagnosed as suffering from new tumours and being too ill to attend. Having heard submissions and watched a DVD of a short tour of the property I reserved my decision.

4. Regulation B13(2) of the 2006 Regulations requires the LA to determine a maximum rent for the property from 1.4.13 when the regulations were amended. They must analyse the number of bedrooms in the property and the number of bedrooms to which the appellant is entitled in accordance with regulation B13(5). Essentially, this allows one bedroom for a couple, a person who is not a child, two same sex children and two children below the age of 10. So, this appellant is entitled to one bedroom on the scheme.

5. The property where he lives has two rooms (in addition to the living room) either or both of which could be used as bedrooms. OMBC has decided that they are bedrooms. The appellant argues through Ms [REDACTED] that only one is used as a bedroom. He says that he uses the other as a dining room because he cannot eat his meals in the living room. The kitchen is in the living room and there is a small area with linoleum on the floor. There is insufficient room for a dining table in the living room.

6. Ms [REDACTED] submits that the property has 1 living room with a kitchenette area, one bathroom, one bedroom and one dining room. She submits that the appellant was looking for a one bedroom property in 2009 but there were none available from social landlords at the time. He moved into this property and was awarded housing benefit on 14 December 2009. He never used the room which he uses as a dining room as a bedroom. On 16 May 2013 the appellant was diagnosed with small cell lung cancer and has been treated with chemotherapy. He has been awarded Disability Living Allowance on the grounds that he is terminally ill. I have not seen any medical evidence and make these findings on the basis of the submission from Ms Laidlaw. I did not consider it was proportionate to delay the outcome of the appeal.

7. I have seen DVD footage and photographs of the flat. The second room has a dining table and side board in it. I was not told the dimensions of any of the rooms. No issue on the size of the rooms has been raised. The property looks to be in a modern block and is on the fifth floor.

8. The question in issue is whether the second room can be classed as a bedroom when it has never been used by the appellant as such.

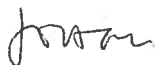
9. For ██████ Ms ██████ submits that the property has been let and the level of rent is set at the two bedroom rate. She also relies on his application for housing benefit in which he describes it as a 2 bed room property. He also signed a document at the beginning of the tenancy which describes it as a 2 bedroom flat. The appellant has not attended the hearing and I have been unable to ask him why he described it as a 2 bedroom property in two documents.

10. Bedroom is not defined in the regulations. The Guidance issued by central government in HB/CTB Circular A4/2012 provides that it is up to the landlord to accurately describe the property in line with the rent charged. Ms ██████ submits that the landlord's classification is considered to be determinative by the local authority. She described a procedure whereby the authority would investigate further where there was a dispute between the landlord and the tenant about the number of bedrooms. However, as there was no dispute in this case, given the contents of the housing benefit application form and the additional document signed by the appellant, they did not conduct any further investigation.

11. It was significant that the appellant had said that he was living in a two bedroom flat on the housing benefit application and tenancy agreement forms. On balance, I accept the proposition that landlords cannot arbitrarily reclassify room use and that the tenant is free to use rooms as they wish. On the evidence in this case I am persuaded that the appellant has always used the second room as a dining room and that he regards the property as a one bedroom property. Of course this was not an issue until the regulations were amended and regulation B13 was applied to him which may well be the explanation for his descriptions on the application form and tenancy agreement. Examining the evidence as a whole I find that this is a one bedroom property and regulation B13(3) does not apply with the result that no reduction should be made from his housing benefit.

12. Having made this finding I have not gone on to make a finding on the submission under the HRA.

Signed:



Date:

13 January 2014

District Tribunal Judge O'Hara

Issued to the parties on: