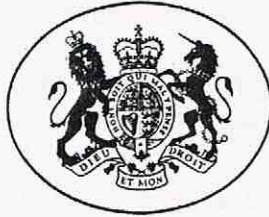


Appellant: Mr. B
Tribunal Ref: SC062/14/00514
Date of Hearing: 29/8/2014



FIRST-TIER TRIBUNAL

[Redacted]

Held at Birkenhead

on 29th August 2014

Before Judge D. M. Taylor

Appellant: Mr. B	Tribunal Ref. SC062/14/00514
Respondent: Secretary of State for Work and Pensions	

STATEMENT OF REASONS FOR DECISION

This statement is to be read together with the decision notice issued by the tribunal

1. This was an appeal by Mr. B against the decision of Wirral Borough Council to reduce the maximum eligible rent to be used in the calculation of housing benefit by 14% from 7.4.2014. The decision under appeal was that taken on 4.3.2014 to supersede an existing award of housing benefit from 7.4.2014 as a result of a rent increase from that date. The decision letter appeared at pages 45-48 in the appeal bundle. Mr. B wrote on 9.7.2014 that he wished "to appeal your decision of March 2014" (p.49).
2. Regulation B13 of the Housing Benefit Regulations deals with the determination of the maximum rent for properties let in the social sector. Regulation B13 (5) provides that a claimant is entitled to one bedroom for each of a list of categories of people occupying the property. Mr. B lived alone. The council decided that he was entitled to one bedroom. There was no dispute between the parties on this point. The council also decided that Mr. B lived in a two bedroom property and, as a result, under Regulation B13 (3), the eligible rent was to be reduced by 14%. Mr. B argued that it was only a one bedroom property.
3. The tribunal took into account all of the scheduled evidence and the further submission produced at the hearing. It had the benefit of hearing from Mr. B, his representative, Mr. C, and the council's Presenting Officer, Mr. Ba.
4. Mr. B was the sole tenant of which was a ground floor flat. It had been built in 1998 as a totally wheelchair accessible flat. It was described by the landlord as a 2 bedroom flat. It consists of a hallway off which are situated a kitchen, a

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bathroom, a living room, a bedroom and another room which is the subject of this dispute.

5. The first tenant had been an elderly lady who also lived alone. Mr. B was the second tenant. He moved in in June 2002. He has always lived alone in the flat. He has never used the second bedroom as a bedroom. It has always been used by him as a home office and has been furnished as such throughout the period of the tenancy. Mr. B is a wheelchair user as a result of a number illnesses, including fibromyalgia.
6. Shortly before moving into the flat Mr. B wrote to his housing officer, D B, at the landlord, R, a housing association, stating that he would be using a room as a home office. Mr. B was undertaking a Master's degree in Town and Country Planning at the time that he moved into the property. There was no study facility suitable for wheelchair use at the university. He did not appear to have received a reply, but his housing officer was aware of the use made by Mr. B of the second bedroom because he personally visited the flat shortly after Mr. B moved in.
7. Mr. B obtained his Master's degree in 2003. He immediately started work as a Town Planning consultant while also studying for a PhD. Again there was no study facility suitable for a wheelchair user at the university so he continued to use the room as a home office. In 2006 he was successful in being appointed as a consultant Planning Inspector, the first wheelchair user to be so appointed. He was required to have a minimum level of accommodation at home to undertake the work, a requirement which he met because he had the home office. At that time he wrote to J B at R to explain the circumstances of his starting work in his new role and obtaining permission to use the room as an office in connection with that work. Mr. B stated that Mr. replied giving such permission, although Mr. B was unable to produce the letter.
8. Mr. B had provided a report prepared by a physiotherapist dated 22.5.2006 following a visit to on 18.5.06 (pp. 53-67). The report identified Mr. B's company as . The referral to the physiotherapist had been made by the North West Disability Service, a part of Jobcentre Plus. The reason for the referral was stated to be: "Client requires advice regarding his home office". Mr. B would be working "full time on a consultancy basis". The report included a photograph (p. 57) which showed Mr. B sitting at his desk surrounded by paperwork and shelving with further paperwork and files.
9. In October 2007 he became a salaried Planning Inspector, continuing to work from home. When new health conditions arose in 2010 he was forced to resign from his post, but in 2011 resumed his career as an independent Planning consultant under the permitted work rules while continuing to claim Employment and Support Allowance. Photographs were produced of the room as it now stood (pp. 69-70), which showed extensive shelving, files and paperwork and a chair, desk and computer. Mr. B acknowledged that there had been no structural alterations to the room.
10. When claiming housing benefit Mr. B had described the property as having two bedrooms. His most recent claim form dated 27.8.2010 indicated that there were 2 bedrooms (p.14). On 13.11.2012 the council wrote to Mr. B in relation to the forthcoming changes in housing benefit warning that "if you have one or more extra bedrooms your housing benefit may be reduced" (p.35). He was informed that the council understood the property to have two bedrooms. He was invited to identify the

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rooms in the property and he indicated that there two bedrooms which were used by him (p.38). Mr. Ba told the tribunal that the landlord had identified the property as having two bedrooms in a computerised record relating to all of its properties, which he had consulted. The tribunal accepted his evidence that that was the case.

11. The tribunal questioned Mr. B at length about why he had completed the forms referring to two bedrooms. Mr. B's explanation was that the landlord had described it as a two bedroom property and that the council had been told by the landlord that it was a two bedroom property. Mr. B also claimed that he had been told by council officials that he had to put down on the form completed in 2012 that there were two bedrooms. The tribunal found it difficult to accept that claim. The form issued in November 2012 was giving him the opportunity to provide his own assessment of number of rooms in the property. Mr. B is evidently a highly intelligent man. From the tribunal's observation of him at the hearing, he did not appear to be a person who would necessarily seek or follow the instructions of a council official against his own judgement. The tribunal found that he had filled in the housing benefit forms incorrectly. The likely explanation for that was that Mr. B feared that doing otherwise might jeopardise his tenancy with R. He would naturally be very anxious to retain his flat which was totally wheelchair accessible and also allowed him to have a home office.
12. There is no definition of what constitutes a bedroom within the regulations. It is an ordinary English word and should be given its everyday meaning. Mr. Ba in his submission identified at section 5.16 a series of factors that could be relevant to whether or not a room is to be regarded as a bedroom. The tribunal accepted that they could be relevant factors. The fact that the landlord regarded the property as having two bedrooms is relevant. However, it is not the determining factor. In this case, the landlord had been aware from the outset of the tenancy in 2002 that Mr. B not only would not be using the second bedroom as a bedroom but also that he would be using it as a home office. The landlord was made aware that the room continued to be used as a home office at later dates, including in 2006 (see paragraph 6 above) and also in January 2014, when Mr. B had specifically raised the issue of the "bedroom tax". The tribunal had accepted Mr. B's evidence about the use of the room. It would be perverse to categorise the room as a bedroom when it had been used as a home office for 12 years and had never been used as a bedroom. It was not a spare bedroom.
13. Mr. Ba argued that, under the Local Housing Allowance provisions, a tenant in the private sector would only be entitled to the local housing allowance rate for one bedroom accommodation regardless of the use of another room for other purposes. Mr. C asserted that the level of the one bedroom rate for Local Housing Allowance was higher than the rent fixed for . The tribunal did not find the comparison helpful. It was considering the provisions in relation to maximum rent in the social housing sector. The provisions made no explicit or implicit cross reference to the provisions for Local Housing Allowance.
14. Mr. B was entitled to one bedroom. The property had one bedroom. The eligible rent was therefore not to be reduced under Regulation B13 from 7.4.2014.

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The above is a statement of reasons for the Tribunal's decision, under rule 34 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

Signed Tribunal Judge:



Date:

8/9/14

Statement issued to

Appellant on:

Typist: RP

Respondent on:

10/9/14