



FIRST-TIER TRIBUNAL

SOCIAL ENTITLEMENT CHAMBER

Held at **KIRKCALDY**

on **26/08/13**

Before **SG Collins QC**

Appellant: Ms A Harrower-Gray

Tribunal Ref. SC108/13/01318

NI No [REDACTED]

Respondent: Local Authority Fife Council

DECISION NOTICE

1. The appeal is allowed.
2. The decision notified on 20.3.13 is set aside. From 1.4.13 the appellant's eligible rent is not subject to reduction. This is because the number of bedrooms in the dwelling does not exceed the number of bedrooms to which the appellant is entitled in accordance with paragraph B13(5) of the Housing Benefit Regulations 2006 (as inserted by the Housing Benefit (Amendment) Regulations 2012 SI 2012/3040).
3. The case is remitted to the respondent to re-determine the appellant's eligible rent from 1.4.13 in the light of the Tribunal's decision.

SUMMARY OF REASONS

4. An oral hearing of this appeal took place on 26.8.13. The appellant attended with her solicitor, Mr Sutherland, of Fife Law Centre. The respondents were represented by a presenting officer, Mr Bray. I heard oral evidence from the appellant and submissions from Mr Sutherland and Mr Bray. Having done so I reserved my decision.
5. Having further considered the matter I am satisfied that the appellant made a renewed claim for housing benefit from 1.4.13 as a single person. This was in respect of a four apartment property of which she is the tenant. The appellant has resided at the property since 2011, although she knew the former occupant and therefore had some knowledge of the use of the

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apartments in the property prior to becoming tenant herself. Her landlord is Kingdom Housing Association (KHA).

6. In terms of regulation B13(2) of the 2006 Regulations the respondent was obliged to determine a maximum rent for the appellant's property from 1.4.13. That involved a comparison between (a) the number of bedrooms in the property, and (b) the number of bedrooms to which the appellant is entitled in terms of paragraph B13(5). Paragraph B13(5) provides, reading short, that the appellant is entitled to one bedroom for each of a number of specified categories of person or persons who occupy the property as their home.
7. On the available evidence I was satisfied that only the appellant occupies the property as her home. Accordingly the appellant is entitled to one bedroom in terms paragraph B13(5). I was also satisfied that this was the same as the number of bedrooms in the property and that the appellant's eligible rent for housing benefit purposes does not fall to be reduced in terms of paragraph B13(3).
8. Mr Bray submitted that the respondent had followed the Guidance in HB/CTB Circular A4/2012 paragraph 12. This stresses that 'bedroom' is not defined in legislation and that 'it will be up to the landlord to accurately describe the property in line with the rent charged.' In this case the landlord had notified the respondent that the appellant's property was regarded as having three bedrooms. Even accepting that the respondent was entitled to take this approach and was not obliged to inspect every property for itself, it was not suggested that the landlord's classification was determinative.
9. Having heard the appellant's oral evidence, and the careful submissions of Mr Sutherland based on his own inspection of her property, I was satisfied that if the landlord has indeed stated that this property has three bedrooms then it was wrong to do so.
10. The appellant's property dates from perhaps as early as 1660. It may formerly have been part of a manse. It has been subject to unsympathetic subdivision and clumsy internal rearrangement to reach its present state. It is not possible for me to say on the available evidence whether any particular apartment was originally designed to fulfil any particular purpose. It has an unusual and irregular layout and non standard apartments.
11. In addition to the room used by the appellant as her bedroom and the kitchen and bathroom there are three other apartments which must be considered.
12. The first of these apartments is used as a sitting room and has been so used since at least 1996. It is about 10 feet by 13 feet in area and photographs are available at pages 42 and 43. There is no evidence before me to suggest that it was designed for use as a bedroom, nor that it has ever been used as a bedroom. This is therefore not a case where the *appellant* is seeking to re-classify as a sitting room a room which on the face of it is a bedroom, but where the *respondent* is seeking to re-classify as a bedroom a room which on the face of it is a sitting room. I am not satisfied that the respondent has put forward a good and sufficient basis to do so. A room which on the face of it is a sitting room cannot simply be re-

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classified as a bedroom by the respondent just because it might in theory be used for that purpose - any more than a room which is on the face of it a bedroom can be re-classified by a claimant as, for example, a 'games room', just because it might in theory be used for that purpose. On the evidence before me the long established use of this room in this unusual and non standard property is as a sitting room. I am satisfied that it is not appropriate to re-classify it as a bedroom.

13. Additionally, the photographs at pages 42 and 43 show that the room is heated by a solid fuel stove vented through a window. The question was raised by Mr Sutherland as to whether it could safely or lawfully be used as a bedroom given the presence of the stove, but I was not addressed on whether building regulations throw any light on this.
14. The second apartment to be considered is used as a dining room and for food preparation. It is about 9 feet by 11 feet in area and can be seen in photographs at pages 40 and 41. The door to the kitchen opens directly off the middle of this room. The kitchen is very small and in need of renovation. It is so small that the appellant reasonably requires to carry out food preparation on the table in the room now under consideration. Again, there is no evidence before me to suggest that this room was ever intended for use as a bedroom, or has ever been used as a bedroom. Given the proximity to the kitchen, moreover, I do not consider that it could appropriately be used as a bedroom. Again, the starting point is that on the face of it this room is a dining room, and I am not satisfied that it is appropriate to re-classify it as a bedroom.
15. The third apartment has no established use. There are photographs at pages 38 and 39, and a rough floor plan was lodged by Mr Sutherland during the hearing. The room is an irregular L - shape due to conversion and has a total floor area of only about 67 square feet. Given the shape of the room the useful usable floor space is even less than this. It also has a low combed ceiling. Additionally the only natural light is from a recessed dormer window, which is inadequate to provide reasonable natural light throughout the room. Mr Sutherland described it as a 'horrible dark space'. There was no evidence before me to suggest that it had ever been used as a bedroom. While in theory it may be possible to squeeze a single bed into this room I do not accept that overall it is reasonably fit for use as a bedroom or should be classified as such for present purposes.
16. In these circumstances I was satisfied that there is one bedroom only in the appellant's property and that the appeal must accordingly be allowed.

Signed Tribunal Judge:
S G Collins QC



Date: 29/08/13

Decision Notice issued to

Appellant on:

Respondent on: