



FIRST-TIER TRIBUNAL

SOCIAL ENTITLEMENT CHAMBER

Held at Rochdale

on 06/05/2014

Before Judge J B O'Hara

Appellant: Miss [REDACTED] Tribunal Ref. SC947/14/00007

NI No. [REDACTED]

Respondent: Local Authority

DECISION NOTICE

1. The Housing Benefit appeal is allowed.
2. The decision made on 05/03/2013 is set aside.
3. The Tribunal finds that the reduction for under occupancy does not apply in this case as the room which has been treated by the LA as a bedroom is not in fact a bedroom because it is too small and has never been used as a bedroom.

Signed Tribunal Judge: <i>J B O'Hara</i>	Date: 06/05/2014
<i>Decision Notice issued to</i>	<i>Appellant on: 06/05/2014</i>
	<i>Respondent on: 06/05/2014</i>



FIRST TIER TRIBUNAL

Held at: Rochdale
Before: District Tribunal Judge O'Hara

On: 6 May 2014

Appellant: Miss [REDACTED]	Tribunal Ref: SC947/14/0007 NI No: [REDACTED]
Respondent: Oldham Metropolitan Borough Council	

STATEMENT OF REASONS FOR DECISION

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

1. This Statement concerns a decision made on 5 March 2013 by the respondent that the appellant's entitlement to housing benefit should be reduced with effect from 1 April 2013 because of what is known as the bedroom tax. She is living in a three bedroomed house registered with a social landlord. Her son was living with her until 2010. Her 17 year old daughter continues to live with her. According to the rules in the under occupancy scheme, the appellant is under occupying her accommodation by 1 room. Therefore, from 1 April 2013 the respondent applied a 14% reduction to her housing benefit. The appellant's argument is that the third room is not a bedroom for two reasons, one, because it is not used as such and two, because it is too small to count as a bedroom.
2. After reading the papers provided by the respondent and hearing submissions from Ms Laidlaw, caseworker at Oldham CAB, I decided to allow the appeal. The appellant was not present at the hearing. This Statement is requested by Ms Thorne, Team Leader at Oldham Benefits Service(the respondent) who was unable to attend the hearing because of budget driven restrictions imposed by the respondent on her working activities.
3. 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 to receive housing benefit 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 two bedrooms on the scheme.
4. At paragraph 4, Section 7 of her written submission Ms Thorne wrote:

'Neither the Housing Benefit regulations nor Government guidance define what a bedroom is nor any minimum dimensions for a bedroom. Oldham Council have made the decision that the number of bedrooms in a property will be determined primarily by information from the letting Housing Associations as to how many bedrooms are in the property they are renting to their tenant.'
5. At paragraph 19 of the decision in **Bolton Metropolitan Borough Council v BF(HB) [2014]UKUT 48 UTJ** West said this:

'The word 'bedroom' is not defined in the legislation. It is an ordinary English word and should be construed as such. According to the dictionary definition in the Shorter Oxford English Dictionary a bedroom is

" a room containing a bed",

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Whilst in the Collins it is

“a room furnished with beds or used for sleeping”.

In the Merriam Dictionary it is

“ a room used for sleeping”

And in Webster’s Dictionary it is

“ a room furnished with beds and used for sleeping”.

The point at issue in that case was different from here, insofar as the FTT had decided that a room which was normally used as a lounge could nevertheless be treated as a bedroom where an overnight carer slept in it when she stayed.

6. Part 10 of the Housing Act 1985 sets out the criteria for assessing whether a room is a bedroom. These provisions concern overcrowding as between landlord and tenants. Overcrowding is defined in section 324 according to the number of rooms and space available, with reference to the dimensions of rooms. In defining overcrowding, reference is made to the size of the room, its actual and historic use, its purpose, the physical properties of the room including the size and shape but also the usable floor space, the ceiling height and the light coming into the room.

7. Section 326 provides that occupancy should be as follows:

Floor area	Occupants
110 square feet	2 people
90 to 109 sq feet	1.5 people
70 to 89 sq feet	1 person
50 to 69 sq feet	0.5 people

Findings of Fact

8. The room which is classed in this case as a third, unoccupied bedroom measures 72” x 128” or 63.96 square feet. It is too small for any furniture apart from single bed. The appellant’s son used it as a bedroom until 2010 when he moved out. Since then it has been used to store the appellant’s possessions.

9. The appellant has been diagnosed with breast cancer and is being treated with chemotherapy. She is unable to access the loft area in her home to store things and this is why she uses the third room to do so. The Tribunal was shown a photograph of the room which clearly shows the items being stored there.

10. I have not been told whether the appellant has applied for or received a discretionary housing payment for the shortfall in her housing benefit.

Conclusion

11. It would not be practicable for the appellant to take in a lodger to use this room for two reasons. First, is too small. Even if she found a lodger who was able to live in such a small

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space, second, she is suffering from breast cancer and it would not be reasonable to expect her to take in a lodger to her home.

12. The third room is not used as a bedroom. It does not have a bed in it. On the definitions given above, it is not a bedroom.

13. Applying the measurements set out in the Housing Act, the room is too small to be considered a bedroom. It is noted that these provisions exist to deal with a different issue. The guidance in the Act is nevertheless helpful when deciding whether a room is a bedroom.

14. For these reasons the appeal was allowed.

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
District Tribunal Judge O'Hara

Date: 17 June 2014

Statement issued to

Appellant on:

20.6.14.

Respondent on: