

**PART C – Decision under Appeal**

The decision under appeal is the Reconsideration Decision dated February 7, 2013 in which the Ministry of Social Development (the "ministry") denied the appellant's request for a housing allowance for the month of January, 2013 as the appellant had failed, pursuant to section 10(2) of the *Employment and Assistance Act*, to verify that she had paid rent for the month of January, 2013.

**PART D – Relevant Legislation**

*Employment and Assistance Act* (EAA), section 10.

## PART E – Summary of Facts

The evidence before the ministry on reconsideration included the following documents:

1. copies of two handwritten receipts, one dated December 13, 2012, the other dated January 1, 2013 (the "Receipts");
2. copy of Residential Tenancy Agreement dated January 19, 2013, signed by the landlord but not the tenant (the Tenancy Agreement");
3. transcription of the text of an email sent by the appellant to a police officer dated January 20, 2013;
4. photocopy of an address label from a package sent to the appellant at her residence; and
5. appellant's handwritten notes in Section 3 of the Employment and Assistance Request for Reconsideration dated January 30, 2013.

At the hearing the appellant sought to introduce seven documents. Although the ministry did not object to the admission of any of these documents, saying that they were relevant to the matters dealt with on reconsideration, the panel admitted only three of them, as follows:

1. a computer screen printout of the email referred to item 3, above;
2. transcript made by the appellant of two recorded conversations between the appellant and her landlord, one dated January 1, 2013, the other dated January 3, 2013; and
3. a computer screen printout of an advertisement from the appellant's landlord for the premises that had been occupied by the appellant.

At the hearing the appellant's oral evidence included the following:

1. She had been in receipt of income assistance and shelter allowance for some time prior to January, 2013.
2. She took occupation of the premises which are the subject of this appeal (the "Premises") on December 13, 2012 and vacated the Premises on January 30, 2013.
3. At the time she took occupation of the Premises on December 13, 2012, she paid a security deposit of \$240.00 and a pro-rated rent of \$295.00 for the balance of the month of December, 2012.
4. On January 1, 2013 she paid rent of \$480.00 for the month of January, 2013.
5. She insisted on being given receipts for the rental and security deposit payments she made in connection with her rental of the Premises, which receipts are those referred to as the Receipts.
6. The Premises were a form of shared accommodation. She had her own bedroom and bathroom and shared the rest of the upper floor of house (except for the other bedrooms and bathroom) with a man and a wife (collectively, the "Landlord"), whom the appellant presumed owned the property, and their two children.
7. On January 19, 2013 there was a confrontation between the Landlord and the appellant as a result of which the appellant telephoned the police.
8. The police attended the Premises following the appellant's telephone call. The police advised the appellant that for her protection she should sign a formal rental agreement. At the urging of the police, the Landlord printed a rental agreement form from internet, filled it out and signed it. This agreement is the Tenancy Agreement.
9. The appellant refused to sign the Tenancy Agreement because in it the Landlord had stipulated that she would vacate the premises on February 28, 2013 whereas she insisted that she had a month-to-month tenancy with no fixed termination date.
10. On reviewing the Tenancy Agreement the appellant learned that the names by which the

appellant knew the Landlord were different from the names they had used in their advertisements for the rented premises and in their subsequent dealings with the appellant.

11. The transcript of the conversations between the appellant and the Landlord which the appellant recorded on January 1 and 3, 2013 included, inter alia, references to the rent being paid by the appellant and the creation and signing of the Receipts.
12. The ministry contacted the Landlord in late January, 2013 in an attempt to confirm that the appellant in fact resided in the Premises and that she paid rent to the Landlord. The ministry learned the Landlord's telephone number because it was on the copy of the Tenancy Agreement which the appellant had provided the ministry when she met with the ministry on January 24, 2013.

The ministry did not question or object to the admission of any of the foregoing written or oral evidence of the appellant. The panel admitted this evidence under EAA, subs. 22(4) as being in support of the evidence that was before the ministry on reconsideration. The panel noted, however, that the evidence that was relevant to this appeal is that relating to the payment of rent by the appellant for the Premises, not the evidence relating to the appellant's residency in the Premises..

The ministry did not lead any evidence on appeal.

The panel found as facts:

1. The appellant resided in, and rented, the Premises from December 13, 2012 to January 30, 2013.
2. During the period she resided on the Premises, the appellant paid the Landlord a security deposit of \$240.00, rent of \$295.00 in December, 2012 and rent of \$480.00 in January, 2013. She received the Receipts in relation to those payments.
3. The Landlord used a pseudonym in dealing with the appellant until January 19, 2013, the date on which the police attended at the Premises and arranged for the Landlord to complete and sign the Tenancy Agreement.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether or not the ministry reasonably determined that the information the appellant provided in response to the ministry's direction under section 10 of the EAA confirming the payment of rent for the month of January, 2013 was insufficient to verify that she in fact paid rent for that month and, accordingly, was not entitled to a shelter allowance for that month.

The relevant legislation is as follows:

EAA

### Information and verification

10 (1) For the purposes of

- (a) determining whether a person wanting to apply for income assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for income assistance, hardship assistance or a supplement,
- (c) assessing employability and skills for the purposes of an employment plan, or
- (d) assessing compliance with the conditions of an employment plan,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
  - (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
  - (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.
- (2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for income assistance, hardship assistance or a supplement.
- (3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).
- (4) If an applicant or a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for income assistance, hardship assistance or a supplement for the prescribed period.
- (5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

At the outset the panel clarified that although the reconsideration decision discussed the ministry's initial doubts regarding whether or not the appellant actually resided in the Premises, the reconsideration decision ultimately accepted that the appellant resided in the Premises. Thus the issue, as stated above, is whether or not the appellant paid rent and, therefore, was entitled to an offsetting housing allowance (in the amount provided for in the EAR) for the month of January, 2013.

In the reconsideration decision the ministry concluded its discussion of the conflicting evidence concerning the appellant's residency as follows:

The minister is satisfied that this establishes that you are not being charged rent for this residence, regardless of whether you are residing there without the landlord's approval. Therefore since information has not been provided to establish that you have shelter costs, the minister is unable to provide a shelter allowance at this time.

At the hearing of the appeal, the ministry agreed that the matter of the appellant's residency in the Premises was not in issue.

The position of the appellant on appeal was that she had provided the ministry sufficient information – most importantly the receipts and the Tenancy Agreement – to satisfy a skeptical person that she had in fact paid rent for the Premises for January, 2013. There was nothing more that she could have done. The only evidence that suggested that she had not paid rent was the Landlord's telephone statement to the ministry that she did not reside on the Premises and so did not pay rent. When the ministry learned that the Landlord's statement regarding her residency was not credible, the ministry could only reasonably have concluded that the statement concerning rent must also be incredible.

The position of the ministry was that the reconsideration decision was based on the evidence before the ministry at the time the decision was written and, as such, was reasonable.

The panel found as facts that the appellant resided in the Premises and that she paid rent for the month of January, 2013. Other than the impugned telephone statement of the Landlord, which the panel concluded could not reasonably be relied upon once the Landlord's dishonesty had been demonstrated, the panel noted that there was no evidence to suggest that the Receipts were not bona fide and that the receipted amounts had not been paid. The appellant's account of the involvement of the police on January 19, 2013 provided further convincing and consistent evidence that the appellant paid rent for the month of January, 2013. Based on the discussion between the police and the Landlord and the appellant's production of the Receipts, the police concluded that the appellant was a tenant in the Premises. To protect the appellant's rights as a tenant the police insisted that the Landlord draw up the Tenancy Agreement. The Tenancy Agreement refers to the rent and security deposit that the appellant says she paid and confirms that, as the appellant explained, it had not been signed by the appellant. The panel was of the view that the appellant's refusal to sign the Tenancy Agreement – because it provided that the termination date of the appellant's tenancy was February 28, 2013 and, since the appellant did not agree with that provision, she crossed it out – strongly supported her version of the facts. In the opinion of the panel, were the Tenancy Agreement not genuine the appellant would not have inserted the termination clause and she would have signed it to strengthen her contention that she was a tenant. Moreover the panel noted that were it not for the Tenancy Agreement, which the appellant provided to the ministry shortly after it was drawn up, the ministry would not have known the Landlord's telephone number. The suggestion that the appellant would provide the ministry with contact information for a fictitious landlord as a means of verifying that she was paying rent is not credible. The production of the address label and the transcript of the appellant's January 20, 2013 email to the police confirming the Premises as the scene of the incident (buttressed by the computer screen printout of the email) further persuaded the panel of the appellant's credibility regarding both the fact of her tenancy and the payment of rent in January, 2013.

Given the persuasive evidence that the appellant resided in the Premises in January 30, 2013 and

given the acceptance of this fact by the ministry, clearly the information received by the ministry in its telephone call to the Landlord to the effect that the appellant did not reside in the Premises was not credible. Once the Landlord's unreliability became apparent to the ministry – as it must have once the ministry conceded that the appellant resided in the Premises - the ministry could not reasonably have accepted the statement from the Landlord that the appellant had not paid rent for January, 2013. And if the ministry could not accept that statement, there was no evidence whatsoever before the ministry with regard to the issue of whether or not the appellant had paid rent in January, 2013 other than the evidence of the appellant. That evidence included what the panel considered to be compelling and conclusive documentary evidence. Accordingly, acting reasonably the ministry should have determined that the appellant did indeed pay rent in the amount of \$480.00 in January, 2013 and that the appellant was therefore entitled to a shelter allowance for that month.

In drawing the foregoing conclusions the panel has not disregarded the difficulties created for the ministry (and the appellant) by the Landlord's unexplained use of both an allegedly legal name and a pseudonym. The ministry said that its first attempt to verify that the appellant paid rent in January, 2013 was a search of the assessment rolls for the subject property to determine the name of the Landlord. Apparently the name of the Landlord that the appellant provided the ministry was not the name of the registered owner of that property.. While no doubt this discrepancy would raise a question in the minds of the ministry, the panel notes that this is at best a problematic means of determining the name of a landlord. It would not, for example, reveal the name of a landlord who himself rented the property from the owner nor perhaps a family member residing on the property with the owner's permission.

What should have been only the beginning of an inquiry instead became the basis for the initial denial of the appellant's eligibility for the housing allowance for January, 2013. It was not until January 19, 2013 when the police insisted that the Landlord prepare the Tenancy Agreement that the appellant learned the (supposedly) legal name of the Landlord. There is nothing in the appeal record that suggests that the ministry again searched the assessment rolls to see if the name of Landlord used in the Tenancy Agreement was the name of the registered owner of the Premises. Absent any such information, the panel concluded that the ministry was by that time not inclined to revisit its original decision regarding the identity of the Landlord. This reluctance, the panel concluded, was not a reasonable exercise of the ministry's powers, particularly given the persuasive evidence the appellant had proffered in her efforts to persuade the ministry that she was a tenant in the Premises and had paid rent. If the ministry chose to disregard the evidence of the appellant regarding the identity of the Landlord and the terms under which she rented the Premises, it had to demonstrate that it had considered the appellant's evidence and had come to a reasoned determination that this evidence was unreliable. There is nothing in the reconsideration decision that suggests the ministry embarked on such an investigation and analysis.

The view of the panel is that the credibility of the evidence of the appellant, and the patently unreliable evidence of the Landlord, was so apparent that it was not reasonable for the ministry to have decided that the appellant had failed to satisfy the requirements of s. 10 of the EAA to provide the information requested by the ministry. The appellant had, in the opinion of the panel, clearly satisfied her obligation to provide verification of the rent she paid for the Premises in January, 2013. She did so, and to a standard of proof more persuasive than that of the balance of probabilities. The appellant's evidence was consistent, directly on point (notably the Tenancy Agreement and the Receipts) and uncontroverted.

Accordingly, the panel concluded that the decision of the ministry – that the appellant had not satisfied the statutory requirement that she provide the ministry with information that would verify her eligibility for a housing allowance for January, 2013 – was not reasonably supported by the evidence and was not a reasonable application of the relevant statutory provision in the circumstances of the appellant. The February 7, 2013 reconsideration decision is rescinded.