

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision dated January 29, 2014, which held that the Appellant is not eligible for the maximum \$375 shelter allowance during the period his rent is reduced. The Ministry held that pursuant to section 5 of Schedule A, EAPWDR, the Appellant is eligible to receive the smaller of his actual rent and \$375 per month, which is the maximum shelter allowance for his family unit. The Ministry found that the Appellant's rent was retroactively reduced by \$275 for the months of January and February, 2014 and by an additional amount per month by an order of the Residential Tenancy Branch if a previous order of the Branch is not implemented by specified dates.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Sections 1 and 3

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 24;  
Schedule A, Sections 1, 4, 5

PART E – Summary of Facts

Information before the Ministry at reconsideration included:

- A copy of a Residential Tenancy Branch arbitrator's decision, dated December 6, 2013. The RTB ordered a retroactive reduction in rent which was implemented by reducing the Appellant's rent for the months of January and February, 2014 by \$275 to \$100 per month.
- A copy of a Shelter Information form, dated December 18, 2013, showing the Appellant's monthly rent as \$100.
- The Appellant's Request for Reconsideration, signed January 14, 2014.

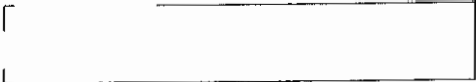
At the hearing, the Appellant submitted a copy of his Non-profit Housing Tenancy Agreement, signed September 28, 2011, showing his monthly rent as \$375.00. The Ministry had no objection to the admission of this document. The Panel determined that the additional documentary evidence was admissible under s. 22(4) of the EAA as it was in support of the records before the Ministry at reconsideration.

In reply to a question from the Ministry, the Appellant stated that he does not know if the Ministry was provided with a copy of the original tenancy agreement. In reply to a question from the Panel, the Appellant stated that the rental amount includes utilities.

The Ministry stood by the Reconsideration Decision and did not provide additional evidence.

The Panel makes the following findings of fact:

- The Appellant pays \$375 per month for accommodation
- AS OF January, 2014, the amount of the monthly rent was temporarily reduced by a decision of the RTB.



## PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision dated January 29, 2014, which held that the Appellant is not eligible for the maximum \$375 shelter allowance during the period his rent is reduced. The Ministry held that pursuant to section 5 of Schedule A, EAPWDR, the Appellant is eligible to receive the smaller of his actual rent and \$375 per month, which is the maximum shelter allowance for his family unit. The Ministry found that the Appellant's rent was retroactively reduced by \$275 for the months of January and February, 2014 and by an additional amount per month by an order of the Residential Tenancy Branch if an order of the Branch is not implemented by specified dates.

### Legislation

*EAPWDA*

### Interpretation

1 (1) In this Act:

"family unit" means an applicant or a recipient and his or her dependants

### Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and

(b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

*EAPWDR*

### Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

(a) the amount determined under Schedule A, minus

(b) the family unit's net income determined under Schedule B.

*Schedule A*

### Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

- (2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

### Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

Item	Column 1	Column 2
	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375

(3) For a family unit of more than 10 persons, the maximum monthly shelter allowance is calculated by adding an extra \$35 for each person by which the family unit size exceeds 10.

(4) Repealed. [B.C. Reg. 62/2010, s. (b).]

(5) Despite subsection (2) (a) or (2.1) (a), if the actual shelter costs of a recipient increase as a result of the recipient remortgaging his or her place of residence, the amount of the mortgage payments is deemed, for the term of the new mortgage, to equal the amount before the remortgaging unless

- (a) the remortgaging was necessary because of the expiry of the mortgage term, and  
(b) the amount borrowed under the mortgage is not increased.

(6) Despite subsection (2) or (2.1), the maximum monthly shelter allowance for a person who

- (a) is a sole recipient without dependants, and

(b) provides confirmation of pregnancy from a medical practitioner, nurse practitioner or a registrant of the College of Midwives of British Columbia

is increased by up to \$195 per month for the duration of the pregnancy.

#### **How actual shelter costs are calculated**

5 (1) For the purpose of this section, utility costs for a family unit's place of residence include only the following costs:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro;
- (e) garbage disposal provided by a company on a regular weekly or biweekly basis;
- (f) rental of one basic residential single-line telephone.

(2) When calculating the actual monthly shelter costs of a family unit, only the following items are included:

- (a) rent for the family unit's place of residence;
- (b) mortgage payments on the family unit's place of residence, if owned by a person in the family unit;
- (c) a house insurance premium for the family unit's place of residence if owned by a person in the family unit;
- (d) property taxes for the family unit's place of residence if owned by a person in the family unit;
- (e) utility costs;
- (f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.

(3) If utility costs fluctuate, they may be averaged over the periods

- (a) beginning on October 1 and ending on March 31, and
- (b) beginning on April 1 and ending on September 30.

(4) If 2 or more family units share the same place of residence, the actual shelter costs of any one of them are the smaller of

- (a) the amount calculated by
  - (i) dividing the actual shelter costs for all the family units by the number of persons occupying that place of residence, and
  - (ii) multiplying the result by the number of persons in that one family unit, and
- (b) the amount declared by the family unit as the shelter costs for that family unit.

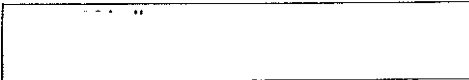
The Appellant's position is that he received an award, not a reduction in rent, in the RTB adjudicator's decision, and the Ministry unreasonably determined that his rent was reduced. He argued that the actual rental of his accommodation remains the same, but the landlord receives less as a means to achieve the penalty that was assessed by the RTB adjudicator.

The Appellant argued that the decision of the Residential Tenancy Branch (RTB) was an award as compensation for the landlord's failure to comply with a previous order of the RTB, and his rent is still \$375 per month, although the means to achieve the penalty was to order a reduction in the monthly amount payable by the Appellant. The Appellant argued that the information provided by the landlord to the Ministry, a Shelter Information form dated December 18, 2013, showing the rent amount as \$100 was not a tenancy agreement and should not be used by the Ministry to determine the Appellant's rent. The Appellant argued that the Ministry uses the same definition of rent as the Residential Tenancy Act (RTA), which is the amount shown in the initial lease, a copy of which was admitted by the Panel, showing the Appellant's rent as \$375 per month. Further, the Appellant argued that Ministry policy requires that documentation of actual shelter costs must be provided by the client, therefore the information provided by the landlord should not be used for that purpose. The Appellant argued that the amount of rent payable according to the lease has not changed, but the amount the landlord is entitled to receive has been reduced. The Appellant argued that the rent reduction was in fact a monetary award to him deducted from the rent payable, and is actually a payment from the landlord to the Appellant. With respect to the RTB adjudicator's decision, the Appellant argued that section 72 of the Residential Tenancy Act should be taken into consideration, because of the provision in subsection (2) that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted, in the case of payment from a landlord to a tenant, from any rent due to the landlord to provide a monetary award. The Appellant argued that the rent reduction in his case is actually a payment from the landlord to the tenant. The Appellant argued that the Ministry's decision results in a payment to the Ministry rather than to the Appellant. The Appellant argued that the cost of the shelter has not changed; the amount received by the landlord has changed. The Appellant referred to the Ministry's policy with respect to eviction and to mission, vision and values. The Appellant argued that the landlord violated the Residential Tenancy Act and was required to pay a penalty which resulted in a retroactive rent reduction as an award to him. In response to a question from the Panel, the Appellant stated that his rent includes utilities, but not telephone service.

The Ministry's position is that the Appellant's rent was reduced for a period of time and the Ministry is only required to pay the smaller of the Appellant's actual shelter costs and the maximum set out in the rate table per section 4 of Schedule A, EAPWDR. The Ministry argued that section 4 of Schedule A, EAPWDR states that the monthly shelter allowance is the smaller of actual shelter costs and the maximum set out in the rate table. The Ministry argued that the RTB decision refers to a rent reduction, not compensation. In this case, the Ministry argued, since the Appellant's rent is paid directly by the Ministry, the Ministry is only required to pay what the Appellant is ordered to pay. With respect to the Tenancy Agreement admitted as evidence by the Panel, the Ministry argued that there is a reference to arbitration of disputes attached to the tenancy agreement, and if a decision is made respecting an award, it overrides the tenancy agreement. The Ministry argued that the Appellant's rent is paid directly by the Ministry, and if the rent is reduced, the Ministry is only required to pay what the Appellant is required to pay. The Ministry argued that the Appellant remains in his accommodation, the tenancy remains the same, the landlord is not receiving the full amount of the rent, but the Ministry is required only to pay the actual amount.

With respect to the amount of rent to be paid, the Panel finds that the Ministry reasonably determined that the Appellant's rent was reduced by a decision of the RTB. The matter of whether this reduced rent is applicable to the Appellant's shelter costs is the issue under appeal.

The Panel considered the RTB adjudicator's reasons for her decision, which state that the award is for the loss



in value of the tenancy, and refers to a retroactive rent reduction which is to revert to the amount that he would normally be charged after the landlord has fully complied with the order of the RTB. With respect to the Appellant's argument that the Ministry was not entitled to use the landlord's Shelter Information form, the Panel notes that this is a matter of policy, not legislation. The amount of rent actually paid for the period in question is not disputed by either party. With respect to the Appellant's argument that the Panel should consider section 72 of the Residential Tenancy Act, the Panel notes that this section is not referenced in the RTB decision nor in the Ministry's reconsideration decision, and therefore is not a matter for the Panel to take into account. The Panel notes that the RTB adjudicator stated that she found the landlord failed to implement a previous order of the RTB, and for that reason a reduction in monthly rent was ordered.

The applicable legislation states that the monthly shelter allowance for the Appellant's family unit is the smaller of the amount set out in the table found in Schedule A, EAPWDR and the family unit's actual shelter costs. The actual shelter cost in this instance, that is, the amount to be paid to the landlord, has been reduced for a period of time. The Panel finds that the Ministry reasonably determined that the amount actually paid is the amount to be used for the purpose of calculating shelter cost under sections 4 and 5 of Schedule A, EAPWDR and that the Appellant is not eligible for the maximum \$375 shelter allowance as long as his rent is less than \$375.

The Panel therefore confirms the Ministry's decision as reasonably supported by the evidence.