

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation (“the ministry”), dated January 11, 2017, which denied the appellant’s request to reduce the amount of the monthly deduction for a security deposit debt. The ministry held that under section 58(3) of the Employment and Assistance Regulation there is no provision to reduce the amount of the \$20.00 monthly recovery.

## PART D – Relevant Legislation

*Employment and Assistance Regulation* (EAR), § 58(2), 58(3)

## PART E – Summary of Facts

The information before the ministry at reconsideration included the following:

- The appellant is a sole recipient of income assistance and is receiving assistance of \$610 per month (\$235 support plus \$375 shelter).
- The appellant submitted a shelter information form on September 20, 2016 in relation to a residence the appellant was renting at \$600 per month, effective September 19, 2016.
- The appellant requested a supplement for security deposit in the amount of \$300.
- A Repayment Agreement signed by the appellant on September 20, 2016, acknowledging a debt of \$300 owed to the province and repayable at \$20 per month. The Agreement states, "I/We acknowledge that the terms of repayment of this debt are subject to periodic review and revision at the sole discretion of the Province or its agents until the said sum is repaid in full."
- The security deposit was paid to the landlord.
- The appellant contacted the ministry on December 7, 2016 to request a reduction in the security deposit repayment amount from \$20 per month to \$10 per month. The ministry denied this request the same day on the basis that the ministry was not able to reduce the repayment amount to \$10 per month.

In the Request for Reconsideration, faxed to the ministry on January 5, 2017, the appellant indicated:

- The regular deduction of \$20 per month is putting him at risk of losing his housing.
- The appellant can avoid the crisis of losing his housing if the repayment is reduced from \$20 to \$10 per month.
- The extra \$10 will make a difference in his ability to retain his housing; otherwise he will be facing eviction.

### Notice of Appeal

In the Notice of Appeal, dated January 17, 2017, the appellant provided argument substantially along the same lines as in his Request for Reconsideration, adding that:

- His landlord will serve him with an eviction notice if he falls behind on his rent.
- Negotiating a change to the repayment agreement will allow him to cover his full rent, avoid eviction, and repay the ministry \$10 per month.
- A local society will assist the appellant with paying the arrears to the landlord.

### Before the Hearing

Prior to the hearing the appellant submitted a handwritten note from his landlord, dated January 31, 2017, the content of which is as follows:

"[Appellant] will not be able to continue renting at my place if he keeps falling behind in the rent."

## **At the Hearing**

### Appellant

The appellant agreed that he signed the repayment agreement with the ministry in order to secure the damage deposit loan but said that he did so “under duress.” The appellant stated that he would have signed anything that was put in front of him in order to secure housing as the weather was changing and he needed a place to live. Prior to securing his current housing, the appellant had spent a significant amount of time in living in poor conditions both at a shelter and in a park.

The appellant indicated that his current residence is a boarding house, but his rent does not include room and board. The appellant relies on local resources providing food, such as a soup kitchen and charitable organization, for his meals. The appellant explained that he is unable to work, and thus requires the \$10 reduction in the monthly loan repayment so that he can pay his full rent of \$600. Without the \$10 reduction the appellant’s tenancy is at risk and he may face eviction. The appellant’s arrears will be covered by a local society that works to end homelessness. The appellant also notes that he has only one current security deposit loan and he has never had one in the past.

### Ministry

The ministry relied on its reconsideration decision at the hearing and did not provide additional evidence.

### **Admissibility of Additional Information**

The panel determined the information provided in the Notice of Appeal as well as the additional documentary evidence provided prior to the hearing was admissible under s. 22(4) of the EAA as it was in support of the records before the minister at reconsideration.

However, the panel notes that the “duress” mentioned by the appellant was not before the ministry at reconsideration and, as such, this panel cannot deal with this portion of the appellant’s arguments.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in denying the appellant's request to reduce the amount of the monthly deduction for a security deposit debt. More specifically, the issue is whether the ministry's determination, which held that under section 58(3) of the EAR there is no provision to reduce the amount of the \$20.00 monthly recovery, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The legislation provides:

### *Employment and Assistance Regulation*

#### **Supplement to pay a security deposit**

**58** (1) In this section:

"**cooperative association**" means a cooperative association as defined in the *Real Estate Development Marketing Act*;

"**security deposit**" means a security deposit as defined in the *Residential Tenancy Act*, or an amount required by a cooperative association to be paid by a recipient to the cooperative association for the same or a similar purpose as a security deposit under the *Residential Tenancy Act*.

(2) The minister may provide a security deposit to or for a family unit that is eligible for income assistance or hardship assistance if

- (a) the security deposit is necessary to enable the family unit to rent residential accommodation,
- (b) the recipient agrees in writing to repay the amount paid under this section, and
- (c) the security deposit does not exceed 50% of one month's rent for the residential accommodation.

(3) The minister may recover the amount of a security deposit provided under subsection (2) by deducting \$20 for each calendar month, or a greater amount with the consent of a recipient, from income assistance or hardship assistance provided to or for the family unit starting with the income assistance or hardship assistance provided for the calendar month following the calendar month during which the security deposit is paid.

### *The position of the parties*

Section 58(3) of the EAR provides that the minister may recover a security deposit at a rate of \$20 per month, or more if the recipient agrees, by deducting the repayment amount from income assistance provided to the recipient.

The appellant argues that the minister may choose to receive a lesser amount under s. 58(3) based on the risk of homelessness. The appellant further argues that a failure to reduce the monthly loan repayment amount places his tenancy at risk and he may face eviction as evidenced by the note from his landlord to this effect.

The ministry argues that because the appellant made a request for a security deposit and signed the repayment agreement, the standard repayment amount for a security deposit is applicable. The ministry argued that there is no legislative provision to reduce the monthly loan repayment from \$20 and so repayment amount must be \$20 per month. Therefore, the ministry could not approve the appellant's request.

### *Panel Decision*

The panel notes the inclusion of the word "may" in section 58(3) of the legislation, which is an indicator of a legislative grant of discretion. However, the panel also notes that the legislation

specifies repayment of \$20 per month or a greater amount once the minister has provided the security deposit supplement and entered into a repayment agreement. The panel has also considered that the signed agreement between the appellant and the ministry sets the monthly payment at \$20 per month and provides that the terms of repayment are “subject to periodic review and revision at the sole discretion of the Province or its agents until the said sum is repaid in full”. Given this context, the panel finds that the ministry was reasonable in denying the appellant’s request for a security deposit debt repayment reduction to \$10 per month.

### **Conclusion**

Having reviewed and considered the evidence and the legislation, the panel finds that the ministry’s reconsideration decision, which denied the appellant’s request for a reduction in his monthly repayment amount, is a reasonable application of the provisions of the EAR in the circumstances of the appellant and confirms the ministry’s reconsideration decision. The appellant is not successful in his appeal.