

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 20, 2018 which denied the appellant's request for a supplement for storage fees as the ministry found that the appellant's request did not meet the requirements to be eligible for the moving supplement under Section 57 of the Employment and Assistance Regulation (EAR) and her request, therefore, does not fall within the ministry's policy for payment of storage fees as a moving cost.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR), Section 57

PART E – SUMMARY OF FACTS

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

- 1) Undated handwritten notes in which the appellant wrote:
 - Her Intent to Rent was for January 1, 2018.
 - The cheque for February she had paid her rent to the landlord; however, she faced an eviction after she had paid the rent and the landlord did not follow proper procedures.
 - She is still dealing with the Residential Tenancy Branch (RTB) and maybe also the courts for aggravated damages.
 - Her landlord for her new residence was away and so he was unable to sign at this time, but her residency began January 1, 2018.
- 2) Undated handwritten notes in which the appellant wrote that she had to vacate for sale of the house, but they did not follow the legislation. The property manager was newly hired by the landlord.
- 3) Contract of Purchase and Sale dated June 9, 2016 for the appellant's previous residence, with a completion date of July 26, 2016 and with a provision in paragraph 5 that the purchasers "assume the current tenant";
- 4) One page of a decision by the RTB dated December 15, 2017 for a further participatory hearing;
- 5) Dispute Resolution Services of the RTB Ex Parte Proceeding notice relating to her previous residence dated December 15, 2017;
- 6) Memo dated December 20, 2017 in which a representative of a realty company wrote that the new owner of the property took it over with named tenants at the time of purchase in June 2016. The rental agreement was signed with the previous owner who hired their company to manage the property and there was no new rental agreement signed with the tenants;
- 7) Shelter Information form dated June 1, 2017 for a rental start date of April 15, 2017 at her previous residence at a total rent of \$450 per month including utilities;
- 8) Shelter Information form dated February 2, 2018 for a rental start date of January 1, 2018 at her new residence in the same municipality as her previous residence, at a total rent of \$550 per month including utilities;
- 9) Payment Receipt dated February 9, 2018 for a storage facility for the total amount of \$427.90 less payment received of \$100 for a balance due of \$327.90.
- 10) Handwritten note dated February 22, 2018 in which the appellant wrote:
 - This is an invoice for a storage unit she had to obtain before she found a new place as of January 1, 2018.
 - It is for 2 months because she has had no way of moving her belongings or any transportation to do so.
 - Her landlord is still owed \$550 for January.
 - She received her February cheque at her previous residence, which she had to vacate because the property was being sold. She had already paid January rent. The landlord hired a private bailiff and she needed a storage place right away.
 - She has since found a family friend to transport her belongings; however, she needs it paid by March 3, 2018 or they will auction off the items.
- 11) Letter stamped received by the ministry on February 23, 2018 in which the property manager of the storage facility wrote that there is a balance outstanding of \$342.90;
- 12) Service Request form dated March 1, 2018 in which the appellant wrote that she did not get 3 quotes from movers as she had a friend to help her transport her belongings so she just needs assistance with storage fees. She has tried community supports and family and a friend to no avail; and,

13) Request for Reconsideration dated March 7, 2018.

In her Request for Reconsideration, the appellant wrote:

- This is an urgent matter. They are going to auction.
- On February 19, 2018, there was a miscommunication and she was treated abruptly by the ministry.
- She said that she had already paid the rent for January to the landlord and then she was ordered to vacate the premises earlier than anticipated.
- She had a place in mind to rent but she was not sure if she could take possession as of December 29, or on January 15.
- She was in an emergency situation because she had to put her belongings in a safe place. A friend of the family rented a storage unit at a moment's notice.
- She talked her new landlord into allowing her to take her new residence sooner than January 15, 2018.
- She had all her belongings in storage and she had the first payment to make and she had no means of transporting her belongings from storage to her new residence.
- She started inquiring if the ministry might help her with the cost of moving her belongings in storage to her new residence.
- She has charges for storage for January, February, and March and she still did not get any monies for January rent.

Additional information

In her Notice of Appeal dated April 1, 2014, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- It was an emergency and she had no time to get the ministry's approval.
- She just needs storage fees as she has a friend to help with transportation, which is \$500 to \$700 savings.
- She will otherwise have to ask the ministry to replace everything that is necessary for her to function in her daily activities and needs. She is pursuing the fight for her daughter with no assistance, which is costly, and her rent is \$550 while she receives \$690 so there is no extra money to purchase new belongings.
- Her new residence is a suite whereas she only had a room at her previous residence.
- The new property manager's only instruction was to have her vacate and then they are tearing it down. The bill of sale did not stipulate when they had to vacate.
- The new property manager was not aware of the laws like the *Residential Tenancy Act* and so he showed up with a bunch of big guys to throw her and her belongings out. She corrected the landlord on how the whole process works.
- With the threats, she asked a friend to help her rent a storage space and he did. He paid for the unit until she was able to pay him back.
- She was at her previous residence on January 10, 2018 when the property manager pounded on the door, kicked the door in, and told them to get out.
- 3 quotes from moving companies run from \$600 to \$1,000 and all she needed was the storage fee paid, not even the cost of movers or a truck.
- She hoped that she would get back some monies from the landlord at her previous residence to cover the cost since she had already paid January rent on December 20, 2017.
- Her current landlord was out of the country and could not sign her new rental agreement until February 23, 2018. January rent is still in arrears with her current landlord.

- The ministry provides moving and transportation costs and crisis and hardship supplements. She is still a single mother fighting for her child with the Ministry of Children and Family Development and she still does not have the financial resources to pay to have her and her daughter's belongings moved to her new residence.
- Her belongings are up for auction by April 18, 2018.

Attached to the Notice of Appeal are:

- 1) A copy of a Writ of Possession dated January 10, 2018 for her previous residence in which the appellant's name does not appear and with other named individuals identified as tenants, filed with the court registry on January 16, 2018; and,
- 2) Undated letter in which the property manager for a storage facility wrote that the appellant's account is past due and her property has been prepared for sale. The amount due is \$442.90 and the property will be sold by way of auction starting on May 20, 2018.

At the hearing, the appellant stated:

- She was aware that the ministry provides help for moving belongings from place to place, and that they needed approval first and quotes from three different movers.
- However, she did not need movers and a truck because she had help from a friend, but she instead needed the storage fees to be covered. She thought she need not bother with the paperwork of getting three quotes when she did not need movers.
- Even though her total rent is more at her new residence, she now has a suite for her and her roommate, whereas before she only had a room in a house on a sublet.
- She was in imminent danger because the property manager was threatening to kick them out of her previous residence. They brought an 'ex parte,' behind the scenes, application so that when they had the teleconference hearing the decision had already been made and they were not given their "day in court."
- She was afraid of the property manager's threats, so she put all of her stuff into storage. A friend lent her the money for the upfront storage fees to keep her belongings safe. She got into her new place earlier than she had expected and so she needed help getting her things out of storage so she could move them into her new residence.
- After she got into the new residence, she went back to help her friends in the previous residence and the bailiff showed up while she was there and kicked the door in. The guys were threatening them and put all her friends' belongings out on the lawn.
- When she contacted the ministry about the storage fees, there was a misunderstanding because the ministry thought she had already moved her belongings out of storage and she was looking to be reimbursed by the ministry. She has not moved her things out of storage because she is a single person on income assistance and she cannot afford to pay her rent and cover the cost of storage.
- She has gone to local community resources and she is getting some help negotiating with the storage facility so that they will not auction off her belongings. She has been talking to them to let them know that she has appealed the ministry's decision.
- If the storage facility auctions off her belongings, she will have nothing and will need to get help from the ministry to replace her things.

- Her new landlord is very nice and he let her get into her new residence early, on January 1, 2018. However, she had already given the January 2018 rent to the landlord of her previous residence and she wants to get the January rent back. She thought the ministry would want to claim that rent back from her previous landlord.
- She did not think about getting approval from the ministry before moving her things into storage because it was “chaos” with the new property manager making threats and she felt she needed to take action right away. She was also trying to help her friends.
- She thought her situation might fall into some sort of supplement from the ministry, such as a crisis supplement.
- She did not inform the ministry earlier about her move because the new landlord was out of the country and was not available to sign the Intent to Rent form.
- The previous landlord gave them about two months’ notice to vacate, and that would have been sometime in November 2017. They thought they had some time since they were fighting the notice with the RTB. The notice said that the property was up for demolition because the property was located on what would become an access road to a strip mall being built. The property sold sometime in August 2017 but there were some discrepancies and no new agreement was drawn up and the tenants did not realize that there were new owners of the property.
- She moved her belongings into the storage unit around December 27, 2017.

The Ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that the appellant initially contacted the ministry with an inquiry on February 19, 2018 and submitted her request for a supplement on February 23, 2018.

Admissibility of Additional Information

The ministry objected to the admissibility of the Writ of Possession and the Letter from the storage facility as these documents were not before the ministry at reconsideration. The panel considered that while these documents were not before the ministry at reconsideration, they tended to corroborate the information that was before the ministry, that she was evicted from her previous residence and that her belongings were in storage. Therefore, the panel admitted the Writ and the letter as being in support of the information and records that was before the ministry on reconsideration, pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

The appellant’s arguments, as set out in the notes with her Notice of Appeal, will be addressed in Part F- Reasons for Panel Decision, below.

PART F – REASONS FOR PANEL DECISION

The issue on this appeal is whether the decision by the ministry, which denied the appellant's request for a supplement for storage fees as part of a moving cost supplement under Section 57 of the Employment and Assistance Regulation (EAR), was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The ministry policy regarding storage fees includes the following:

BC Employment and Assistance (BCEA) Policy and Procedure Online Manual

Moving, Transportation, and Living Costs Policy

Effective: September 1, 2015

...Storage fees can be considered a moving cost and paid by the ministry when a family's possessions must be stored for a limited period of time. Clients are only eligible to have their storage locker fees paid if they are eligible for the supplement.

The legislative criteria to be considered eligible for the supplement for moving costs are set out in Section 57 of the EAR as follows:

Supplements for moving, transportation and living costs

57 (1) In this section:

"living cost" means the cost of accommodation and meals;

"moving cost" means the cost of moving a family unit and its personal effects from one place to another;

"transportation cost" means the cost of travelling from one place to another.

- (2) Subject to subsections (3) and (4), the minister may provide a supplement to or for a family unit that is eligible for income assistance, other than as a transient under section 10 of Schedule A, or hardship assistance to assist with one or more of the following:
- (a) moving costs required to move anywhere in Canada, if a recipient in the family unit is not working but has arranged confirmed employment that would significantly promote the financial independence of the family unit and the recipient is required to move to begin that employment;
 - (b) moving costs required to move to another province or country, if the family unit is required to move to improve its living circumstances;
 - (c) moving costs required to move within a municipality or unincorporated area or to an adjacent municipality or unincorporated area because the family unit's rented residential accommodation is being sold or demolished and notice to vacate has been given, or has been condemned;
 - (d) moving costs required to move within a municipality or unincorporated area or to an adjacent municipality or unincorporated area if the family unit's shelter costs would be significantly reduced as a result of the move;
 - (e) moving costs required to move to another area in British Columbia to avoid an imminent threat to the physical safety of any person in the family unit;
 - (f) transportation costs and living costs required to attend a hearing relating to a child protection proceeding under the Child, Family and Community Service Act, if a recipient is given notice of the hearing and is a party to the proceeding;
 - (g) transportation costs, living costs, child care costs and fees resulting from
 - (i) the required attendance of a recipient in the family unit at a hearing, or
 - (ii) other requirements a recipient in the family unit must fulfil in connection with the exercise of a maintenance right assigned to the minister under section 20 [assignment of maintenance rights].
- (3) A family unit is eligible for a supplement under this section only if
- (a) there are no resources available to the family unit to cover the costs for which the supplement may be provided, and
 - (b) a recipient in the family unit receives the minister's approval before incurring those costs. . . .

Panel decision

Reasons for Move- Section 57(2) of the EAR

Section 57(1) sets out a definition of the costs that are provided for in the section, including "moving cost" as being the cost of moving a family unit and its personal effects from one place to another. While the cost for rental of a storage unit is not specifically included in this definition, the ministry's BCEA policy and procedures manual clarifies that where the cost can be said to be part of the cost for moving a family unit and its personal effects from one place to another in the specific scenarios set out in the section, and if the possession must be stored for a limited period of time to facilitate this move, the ministry is given discretion to consider storage fees as a part of the family unit's "moving cost."

In the reconsideration decision, the ministry found that the appellant's request did not meet the requirements to be eligible for the moving supplement under Section 57 of the EAR and her request, therefore, does not fall within the ministry's policy for payment of storage fees as a moving cost. The ministry wrote that although the appellant moved to a new residence as of January 1, 2018, her move did not fit within one of the required reasons for the move, as set out in Section 57(2), and she did not receive the ministry's approval before incurring the costs, as required by Section 57(3)(b) of the EAR.

The appellant did not dispute that she was required to move to begin employment, as required by Section 57(2)(a) of the EAR. The appellant also does not dispute that her move from her previous residence to her new residence was within the same municipality and was, therefore, not a move to another province or country, as required by Section 57(2)(b) of the EAR.

The appellant argued that one of the reasons that she was required to move, as covered by Section 57(2)(c) of the EAR, was that her previous residence was sold and that the new owners were planning to demolish the building to put in a strip mall in that location. In the reconsideration decision, the ministry wrote that the purchase papers provided with the appellant's Request for Reconsideration indicated that the current owners of the property purchased the property in June of 2016 and there was no evidence that the appellant was required to move in January 2018 because her previous residence had been sold, was being demolished, or had been condemned. The ministry reasonably considered the copy of a Contract of Purchase and Sale provided by the appellant, which is dated June 9, 2016 and specifies a date for completion of the sale of the property as July 26, 2016 and includes a provision, in paragraph 5 of the Contract, that the purchasers "assume the current tenant." There was no other Contract of Purchase and Sale provided on the appeal.

At the hearing, the appellant stated that the previous landlord gave the tenants and her about two months' notice to vacate, in November 2017, and she and her friends thought they had some time to work with since they were fighting the notice with the RTB. The appellant argued that the new property manager did not follow the procedures to give them proper notice. The appellant stated that the Notice to Vacate referred to the property being up for demolition and the property manager said the new owners were going to build a strip mall near the property and the property would have to be demolished to allow for an access road. The appellant understood that the property sold sometime in August 2017 but there were some discrepancies

and no new agreement was drawn up, and neither the tenants nor the appellant realized that there were new owners of the property. In a Memo dated December 20, 2017, the previous manager for the property confirmed that there was no new rental agreement signed between the new owners and the tenants at the time of the sale in June 2016.

In her Notice of Appeal, the appellant wrote that the new property manager was not aware of the laws like the *Residential Tenancy Act* and so he showed up with a bunch of big guys to throw her and her belongings out. The appellant wrote that she was at her previous residence on January 10, 2018 to help her friends when the property manager pounded on the door, kicked the door in, and told them to get out. The appellant provided a copy of the Writ of Possession dated January 10, 2018 for her previous residence. However, in the absence of a copy of the Notice to Vacate to indicate a reason for the eviction that was not within the tenants' control, or a copy of a Contract of Purchase and Sale indicating a completion date more current than July of 2016, the panel finds that the ministry reasonable determined that there was insufficient evidence that the appellant was required to move to a new residence in January 2018 because her previous residence was being sold or demolished or had been condemned.

The appellant argued that one of the reasons that she was required to move, as covered by Section 57(2)(d) of the EAR, was that her shelter costs were reduced as a result of the move. Although the appellant's rent at her new residence is \$100 more per month than the rent at her previous residence, the appellant wrote in her Notice of Appeal that her new residence is a suite whereas she only had a room at her previous residence. The appellant stated at the hearing that even though her total rent is more at her new residence, she now has a suite for her and her roommate, whereas before she only had a room in a house on a sublet from her friends.

The ministry wrote that the appellant was required to pay \$450 per month for rent including utilities at her previous residence and she is required to pay \$550 per month for rent including utilities at her new residence and, therefore, her shelter costs have not been reduced as a result of her move. The appellant's argument related to the value that she is getting for her rent, that she now has an entire suite rather than just a room for the rent that she pays; however, the wording in Section 57(2)(d) is that the family unit's shelter costs would be *significantly reduced* [emphasis added] as a result of the move. The panel finds that as the appellant's rental amount increased by \$100 per month, the ministry reasonably determined that her shelter costs have not been significantly reduced as a result of her move.

The appellant argued that one of the reasons for her move was to avoid an imminent threat to the physical safety of any person in the family unit. In the reconsideration decision, the ministry wrote that the appellant had not provided evidence to suggest that she was in danger at her previous residence.

The appellant stated at the hearing that she was in imminent danger because the property manager was threatening to kick them out of her previous residence. The appellant wrote in her Notice of Appeal that, with the threats made by the property manager, she was afraid and asked a friend to help her rent a storage space and he did. The appellant wrote that her friend paid for the storage unit to keep her belongings safe until she was able to pay him back. At the hearing,

the appellant stated that the property manager brought an 'ex parte,' behind the scenes, application so that when they had the teleconference hearing with the RTB the decision had already been made and they were not given their "day in court."

In her Notice of Appeal, the appellant wrote that the new property manager was not aware of the laws like the *Residential Tenancy Act* and so he showed up with a bunch of big guys to throw her and her belongings out. The appellant wrote that she was at her previous residence on January 10, 2018 when the property manager pounded on the door, kicked the door in, and told them to get out. The appellant stated at the hearing that the private bailiff guys were threatening them and put all her friends' belongings out on the lawn.

The appellant stated at the hearing that she had already moved to her new residence on January 1, 2018 and had returned to her previous residence on January 10, 2018 to help her friends, at which time the landlord executed the Write of Possession for the unit. While the appellant disputes that proper procedures were followed with the RTB, and she wrote in her notes that they may have to pursue a remedy in the courts against the previous landlord for aggravated damages, she also provided a copy of a Writ of Possession dated January 10, 2018 for her previous residence. The panel finds that the court had thereby endorsed the landlord's legal right to claim possession of the unit and the ministry reasonably concluded that there was insufficient evidence to establish that the appellant was required to move to avoid an imminent threat to her physical safety, as required by Section 57(2)(e) of the EAR. Therefore, the panel finds that the ministry reasonably concluded that the circumstances of the appellant's move do not fall within one of the listed scenarios requiring a move within the municipality, as set out in Section 57(2) of the EAR.

Prior Approval- Section 57(3) of the EAR

Section 57(3)(b) of the EAR states that a family unit is eligible for a supplement only if a recipient in the family unit receives the ministry's approval before incurring the moving costs. In the reconsideration decision, the ministry wrote that the appellant put her belongings in storage on January 1, 2018 and she did not request assistance from the ministry until February 23, 2018. The ministry wrote that the appellant has not provided any evidence to support that she was required to move sooner than she expected.

At the hearing, the appellant clarified that she moved her belongings into the storage unit prior to January 1, 2018, around December 27, 2017, and she did not think about getting approval from the ministry before moving her things into storage because it was "chaos" with the new property manager making threats and she felt she needed to take action right away. The appellant stated that she was also trying to help her friends. In her Request for Reconsideration, the appellant wrote that she talked her new landlord into allowing her to take her new residence sooner than January 15, 2018 and she moved on January 1, 2018. The appellant acknowledged that she did not contact the ministry until February 19, 2018. While the appellant wrote in her Notice of Appeal that her current landlord was out of the country and could not sign her new rental agreement until February 23, 2018, there is no indication that the rental agreement was required in order to request a supplement from the ministry for her move.

At the hearing, the appellant stated that since she had help from a friend and did not need movers and a truck, she thought she need not bother with the paperwork of getting three quotes when she did not need movers. The appellant stated that when she contacted the ministry about the storage fees on February 19, 2018, there was a misunderstanding because the ministry thought she had already moved her belongings out of storage and she was looking to be reimbursed. The appellant clarified that she has not moved her things out of storage because she is a single person on income assistance and she cannot afford to pay her rent and cover the cost of storage, which has now accrued for 3 months.

The appellant stated at the hearing that the landlord had provided two months' Notice to Vacate from her previous residence and, although she was helping her friends dispute the Notice through the RTB, the appellant acknowledged that she was aware she would likely need to move and she had found another place to rent, commencing either January 1 or January 15, 2018. As the appellant did not request a supplement from the ministry until February 23, 2018, the panel finds that the ministry reasonably concluded that there was insufficient evidence to support that the appellant was required to move sooner than she expected, and approval was not obtained by the appellant prior to incurring the cost for storage . The panel finds that the ministry reasonably determined that the requirement in Section 57(3)(b) of the EAR was not met in the appellant's circumstances and she is, therefore, not eligible for the moving supplement.

Conclusion

Overall, the panel finds that the ministry's decision which denied the appellant's request for a supplement for storage fees under Section 57 of the EAR, is a reasonable application of the applicable enactment in the circumstances of the appellant and the panel confirms the ministry's decision. Therefore, the appellant's appeal is not successful.