

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision dated August 14, 2018 (the “Reconsideration Decision”) of the Ministry of Social Development and Poverty Reduction (the “Ministry”), which denied the appellant a crisis supplement in respect of a request to be reimbursed \$750 for a damage deposit regarding a move into certain premises commencing July 1, 2018, because the Ministry determined that the request did not meet the criteria under sub-sections 58 (1), (2) and (4) of the *Employment and Assistance Regulation* (“EAR”).

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (“EAA”), section 4

EAR, section 58

Residential Tenancy Act, definition of “security deposit”

PART E – SUMMARY OF FACTS

The evidence before the Ministry at the time of the Reconsideration Decision consisted of the following:

- information from the appellant's spouse on June 22, 2018 that the appellant and her spouse were seeking other accommodation so that their three children could be returned to their care or they could receive child in care top up supplement;
- a copy of a residential tenancy agreement indicating as of July 1, 2018 the appellant was renting certain premises for a total of \$2250 per month. The form also indicated that \$1125 had been paid as a security deposit. The form further indicated that \$1125 was still owed as a pet deposit and was due by October 30, 2018;
- on July 12, 2018 a Ministry worker contacted the landlord of the rental premises and confirmed the appellant had already paid the damage deposit but was still required to pay the pet deposit;
- on July 25, 2018 the appellant submitted a request for a crisis supplement via the online portal. The appellant advised she had used her whole assistance cheque toward securing the rental premises and her share of the rent is \$1500 per month (based on \$250 per person) and therefore she requested to be reimbursed \$750 for her damage deposit.

In her notice of appeal dated August 15, 2018 the appellant stated that:

- she had just moved back from another province and was struggling to get prepared for her youngest three children to be returned from Ministry custody;
- she finally found a place suitable for her family and the landlord is expecting her portion of the damage deposit, which is \$750;
- it was a necessity to have and keep stable housing in order for her children to be allowed to return home to their family whom they need.

The appellant did not attend the hearing and, after having confirmed that the appellant had been notified of the hearing date and time, the hearing proceeded under section 86 (b) of the EAR. The Ministry noted that the Ministry can issue a security deposit but must follow the definition for "security deposit" in the EAR and its reference to the *Residential Tenancy Act* (RTA). Specifically, the Ministry noted the distinction between a regular "security deposit" and a "pet security deposit" as defined in the RTA.

The Ministry noted that in assessing the request for a crisis supplement for a security deposit it looks at whether the client has spent her own funds, which can sometimes then be reimbursed to the client, as long as the legislative requirements are met.

The Ministry noted that in issuing a security deposit the Ministry sometimes issues the security deposit directly to a landlord because the client has no available funds or, occasionally, the security deposit is reimbursed to the client as the client has used other funds to pay the security deposit; but reimbursement is only made so long as the client meets the relevant criteria.

The Ministry noted that the Reconsideration Decision referenced that the criteria was not met under section 58 (2) of the EAR because the appellant did not require the security deposit to enable her to rent the accommodation and that the landlord and the appellant had confirmed that the appellant had already paid the security deposit and moved into the accommodation.

However, the Ministry acknowledged that in this appeal it was relying upon the appellant having failed to meet the criteria set out in section 58 (4). The Ministry confirmed it was not relying upon an argument based on the appellant having already moved into the rental premises nor having already paid the security deposit.

At the hearing, the Ministry reviewed the history of security deposits issued to the appellant.

The Ministry noted that the appellant had four outstanding security deposits at the time of her request for an additional security deposit and that accordingly the Ministry was unable to issue an additional security deposit.

The Ministry representative noted that in the Ministry's records at the relevant time there were four outstanding security deposits only one of which was in respect of the appellant fleeing an abusive circumstance. Those security deposits are reflected in the circumstances referred to in the Reconsideration Decision.

The Ministry noted that their file reflected that the appellant had indicated she used one of her income assistance cheques to pay the security deposit. The Ministry noted that the EAR limits the number of deposits the Ministry can issue unless there is abuse and the appellant was not fleeing abuse, and that the only outstanding security deposit to be paid by the appellant was a pet security deposit.

The Ministry noted that the applicable legislation, and in particular section 58 (4) of the EAR, provides that the Minister must not provide more than two security deposits to or for a family unit unless certain exceptions apply. The Ministry noted that the exceptions did not apply in this case; in particular that only one of the security deposits had not been recovered or repaid, the family unit required a security deposit to change rented residential accommodation because the recipient is separating from an abusive spouse, or because the family unit's rented residential accommodation is being sold or demolished and a notice to vacate has been given or the accommodation has been condemned, or the Minister is satisfied that the family unit is homeless or at imminent risk of becoming homeless.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry reasonably determined that the appellant was not eligible for a crisis supplement in respect of the deposit required for the subject premises because the Ministry determined that the request did not meet the criteria under subsections 58 (1), (2), and (4) of the EAR.

Legislative Framework

The relevant section of the EAA is as follows:

Income assistance and supplements

- 4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

The relevant subsections of the EAR are as follows:

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.

(4) The minister must not provide more than 2 security deposits to or for a family unit unless

- (a) only one of the security deposits has not been recovered or repaid,
- (b) the family unit requires up to one more security deposit to change rented residential accommodation
 - (i) because the recipient is separating from an abusive spouse, or
 - (ii) because the family unit's rented residential accommodation
 - (A) is being sold or demolished and a notice to vacate has been given, or
 - (B) has been condemned, or
- (c) the minister is satisfied that the family unit is homeless or at imminent risk of becoming homeless.

The relevant section of the *Residential Tenancy Act* is as follows:

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:

- (a) post-dated cheques for rent;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

Panel Decision

The panel notes the references in the Reconsideration Decision to section 58 (2) of the EAR as well as references to the *Residential Tenancy Act* definition of "security deposit" as not including a pet damage deposit.

The panel notes that at the hearing the Ministry was not relying upon section 58 (2) of the EAR nor the distinction between a regular security deposit and a pet damage deposit.

The Ministry relies upon section 58 (4) of the EAR which provides that the Minister must not provide more than two security deposits to or for a family unit unless:

- only one of the security deposits has not been recovered or repaid;
- the family unit requires up to one more security deposit to change rented residential accommodation because the recipient is separating from an abusive spouse or because the family unit's rented residential accommodation is being sold or demolished and a notice to vacate has been given or the accommodation has been condemned;
- the Minister is satisfied that the family unit is homeless or at imminent risk of becoming homeless.

The evidence before the Minister and at the hearing establishes that the appellant did not meet any of the criteria set out in section 58 (4) of the EAR. In particular more than one of the security deposits issued to the appellant had not been recovered or repaid; the family unit did not require one more security deposit because the recipient was separating from an abusive spouse or because the family unit's rented residential accommodation was being sold or demolished and a notice to vacate had been given or the accommodation had been condemned; or that the family unit was homeless or at imminent risk of becoming homeless.

Accordingly, in respect of the application of section 58 (4) of the EAR, the panel finds that the Reconsideration Decision was a reasonable application of section 58 (4) of the EAR in the appellant's circumstances and was reasonably supported by the evidence. In the result, the panel confirms the Ministry's decision. The appellant is not successful in the appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Perry Mazzone

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018-09-14

PRINT NAME

Susan Ferguson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-09-14

PRINT NAME

Connie Simonsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-09-14