

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of March 1, 2019 in which the ministry determined that the appellant did not provide sufficient evidence to verify the living arrangements, and was denied a security deposit, pursuant to section 56 of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – RELEVANT LEGISLATION

EAPWDR *Employment and Assistance for Persons with Disabilities Regulation, section 56*
RTA *Residential Tenancy Act, section 4*

PART E – SUMMARY OF FACTS

The information before the ministry at the time of reconsideration included the following:

- 1) **February 4, 2019** - The ministry indicates that they had received;
 - a new shelter form – which indicates that the appellant would be renting a self-contained room or suite for \$850.00 a month, and that the appellant would not be sharing a bathroom or a kitchen with the property owner. The appellant provides that he requires \$425.00 for a security deposit.
 - **February 5, 2019**- The ministry reviewed your request and verified the shelter information for using a BC Assessment. The residence is a single-family dwelling and the owner resides at the same residence. The ministry notes that the Appellant shared a phone number with the landlord. The ministry attempted to contact the Appellant, and the Appellant contacted the ministry the next day. The Appellant was advised that his request was denied. At that time, the ministry notes that the Appellant stated that he is living in a space above the garage which includes utilities. The Appellant explained that he lived in the basement suite of the same residence previously, and did not require a security deposit.
 - In section 3 of the Appellant's Request for Reconsideration "L". writes "Appellant has his own bachelor place with kitchen and bathroom and own entrance. He rent is \$850.00 per month; his damage deposit is \$425.00". The ministry notes that the signature is difficult to read, therefore the Reconsideration Officer attempted to contact your Landlord. The result, was a voicemail which states "you have reached x unlimited cleaning service, members of the better business bureau."
 - The Appellant writes on his Request for Reconsideration to contact him at the landlord's number.

Additional Information

The Appellant did not attend the hearing. After waiting for five minutes, and ensuring the Appellant had received a Notice of Hearing on March 26, 2019, the panel proceeded with the hearing in the absence of the Appellant, pursuant to Section 87 of the *Employment and Assistance Regulation*.

The appellant submitted on March 13, 2019 and before the oral hearing, additional evidence. The evidence consisted of six images, all of which are of the Appellant's residence. The pictures indicate a separate living space, bathroom, kitchen and entrance. The representative of the Ministry made no objection to this information being admitted as evidence. The panel found the images to be relevant and determined them to be admissible, pursuant Section 22 of the *Employment and Assistance Act*. The ministry relied on the Reconsideration Decision.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of March 1, 2019 in which the ministry determined that the appellant did not provide sufficient evidence to verify the living arrangements, and was denied a security deposit, pursuant to section 56 of the Employment and Assistance for Persons with Disabilities Regulation.

The relevant section of the legislation is as follows:

Employment and Assistance for Persons with Disabilities Regulation, Section 56

Supplement to pay a security deposit

56(1) In this section:

"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*.

Residential Tenancy Act

Definition of Security Deposit

"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 [...].

4 This Act does not apply to

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,

Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant is not eligible for a security deposit based on the fact that the information provided by the Appellant did not establish that the rental unit was self-contained, and that he was not sharing a bathroom, kitchen or entrance with the owner of the unit. The ministry contends that under section 57, of the *Employment and Assistance for Persons with Disabilities Regulation*, a security deposit is defined by the *Residential Tenancy Act*, and as such; stipulates; that a "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 [...] and under section (4) This Act does not apply to situations where (4)(c) a tenant shares bathroom, or kitchen facilities with the owner of that living accommodation. The ministry held that the information provided by the Appellant did not clearly establish that his living unit was not shared with the owner. The Reconsideration Officer reviewed the Appellant's Request for Reconsideration and had determined that the handwriting of the landlord appeared to be written by the Appellant, as it was a match to other parts of the application. As such, the Reconsideration Officer attempted to contact the Appellant's landlord, and after the call going to voicemail, which did not specify a name, but a cleaning service, the Reconsideration Officer determined that there was not enough information provided by the Appellant to establish the separate unit.

The Appellant's position was that he does have a separate unit from the owner of the suite. He previously lived in the basement suite of the same property but he has now moved into the garage suite and this requires a security deposit. The Appellant submitted six images of his residence, including pictures of his separate entrance, bathroom, and kitchen facilities.

As outlined, Section 56 (1) of the *Employment and Assistance for Persons with Disabilities Regulation*, Supplement to pay a security deposit, a "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*. For this purpose, and under the *Residential Tenancy Act*, the definition of a 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 [...]. However, in section (4) this *Residential Tenancy Act* does not apply to (4)(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The panel finds that the evidence establishes that the appellant did provide six images on March 13, 2019 prior to the hearing which moderately establishes the said self-contained unit requirement; specifically, the non-sharing of a bathroom, entrance and kitchen facilities.

In deliberations, the panel considered that the admissibility of the information submitted by the Appellant was not objected to by the ministry. The panel considered that the ministry, at the hearing, had explained that the eligibility requirement information was unclear at the time the decision was made, but not absent. Therefore, the panel finds that the clarifying information submitted does support the information that was before the Reconsideration Officer at the time the decision was made.

The panel finds that the evidence establishes that the Appellant did provide information from the landlord which indicted the specifics of the separate living arrangement. The panel finds that the ministry acted unreasonably when it alleged that the writing of the landlord "matched" that of the Appellant, and therefore could not be utilized to establish the requirement. The panel considered that the ministry is not qualified as a hand-writing expert or analyst, and as such were outside of their jurisdiction to make that determination. The panel finds that the

evidence establishes that the ministry attempted to call the landlord and clarify the information. The panel finds the evidence establishes that the Appellant was clear throughout his Request for Reconsideration that he shared a phone number with the landlord, and for the ministry to rely on their own inability to make contact, and rely on the fact that the voicemail did not state the landlord's name, was unreasonable in the Appellant's circumstances.

Accordingly, the panel finds that the decision of the ministry to deny the Appellant a security deposit is not reasonably supported by the evidence. Therefore, the panel rescinds the ministry's decision pursuant to section 24(1)(a) and section 24(2)(b) of the *Employment and Assistance Act*. The appellant therefore is successful in his 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

Jennifer Armstrong

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/04/03

PRINT NAME

Kevin Ash

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/04/03

PRINT NAME

David Handelman

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/04/03