

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated July 13, 2023, which denied the appellant's request for a supplement for a security deposit.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWD Act)- Section 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWD
Regulation) - Section 56 Residential Tenancy Act - Section 4

Please see Appendix A for a copy of the relevant legislation.

Part E – Summary of Facts

From the ministry file

- The appellant is a sole recipient of disability assistance.
- On April 28, 2023, the appellant submitted a shelter information form for their current address. The appellant pays \$900 in rent each month and initially was not asked to provide a security deposit or pet damage deposit.
- On June 16, 2023, the appellant contacted the ministry and requested a supplement to pay for a security deposit, as the appellant's landlord had recently requested one of \$500. The appellant has paid \$150 of the security deposit and requires a supplement to pay the remaining \$350.
- On June 16, 2023, the ministry reviewed the appellant's request for a supplement to pay for a security deposit and determined that the appellant is not eligible for the supplement because the appellant does not meet all the criteria. The ministry noted that the appellant is sharing a kitchen or bathroom with the owner of the place the appellant is renting, according to the shelter information form submitted by the appellant to the ministry on April 28, 2023.
- The *Residential Tenancy Act* does not apply to a living accommodation in which a tenant shares a bathroom or kitchen with the owner. The ministry determined that the appellant is ineligible for a security deposit as the ministry follows the *Residential Tenancy Act* rules.
- In the appellant's Request for Consideration submission, they confirmed that their landlord requested a damage deposit of \$500 on May 1, 2023. The appellant paid the landlord \$150 and is requesting the supplement to pay for a security deposit for the remaining \$350.
- The appellant noted that they were issued a supplement to pay for a security deposit at this address before and they do not understand why they cannot request another supplement to pay for a security deposit.
- The appellant explained that they have their own washroom off their bedroom. The only difference between then and now is that the appellant now prepares their own meals and provides their own food.
- The appellant also submitted a hand-written eviction notice from the person they are renting from indicating that if they do not pay the remaining \$350 security deposit by July 1, 2023, their belongings will be put into storage at the appellant's cost.

In the appellant's Notice of Appeal, under the section titled "Tell us why you disagree with the ministry's reconsideration decision," the appellant wrote: "Don't agree with the denial amount because it is different from the request. The amount that is being requested is \$450 and not \$500."

Hearing

The appellant did not attend the hearing and did not submit any additional evidence prior to the hearing.

During the hearing, the ministry relied on their reconsideration decision and reiterated that the ministry has not been able to establish that the *Residential Tenancy Act* applies to the appellant's living situation. The appellant's request does not meet the definition of "security deposit" set out in subsection 56(1) of the EAPWD Regulation. The ministry worker also noted that the ministry is bound by the relevant legislation.

Part F – Reasons for Panel Decision

Issue on appeal

The issue in this appeal is whether the ministry's denial of a supplement for a security deposit is reasonably supported by the evidence or a reasonable application of the relevant legislation in the appellant's circumstances.

Appellant's Position

The appellant argues that they should be eligible for a security deposit because the ministry had provided one previously for the appellant's same address.

The correct amount for the security deposit is \$450, not \$500; based on the \$900 monthly rental fee, \$450 does not exceed 50% of one month's rent for the residential accommodation.

The appellant also has their own bathroom.

Ministry Position

In its Reconsideration Decision of July 13, 2023, the ministry noted that it is satisfied that the security deposit is necessary to enable the appellant to continue to rent their residential accommodation.

The ministry is not satisfied that this security deposit amount of \$500 meets the criteria of a security deposit not exceeding 50% of one month's rent, which is \$900. During the hearing, the ministry worker noted that this issue is surmountable as the ministry pays a maximum of fifty percent of a monthly rental fee regardless of the amount requested.

The Shelter Information form submitted by the appellant on May 9, 2023 indicates that they live with the owner of the residence, and that they share a kitchen and/or bathroom with them.

The *Residential Tenancy Act* does not apply to a living accommodation in which a tenant shares bathroom or kitchen facilities with the owner of that accommodation. In the appellant's Request for Reconsideration, the appellant advised that they have their own bathroom. However, the appellant does not indicate that they have their own separate kitchen. The appellant also has not submitted any new documentation to verify that they do not share a kitchen or bathroom with their landlord, such as a new Shelter Information form signed by the appellant's landlord.

The ministry is unable to establish that the *Residential Tenancy Act* applies to the appellant's living situation, and therefore the appellant's request does not meet the definition of "security deposit" set out in subsection 56(1) of the EAPWD Regulation.

Panel's analysis

Section 56(1) of the EAPWD Regulation states in part that “**security deposit**” means a security deposit as defined in the *Residential Tenancy Act*.

Section 4(c) of the *Residential Tenancy Act* states that the Act does not apply to a “living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.”

The applicant's file includes a May 9, 2023 Shelter Information form signed by the landlord that states the appellant shares a bathroom and kitchen. The appellant noted in a statement included with the Request for Reconsideration that they have their own bathroom. However, the appellant has not provided the ministry with information to confirm that they *do not* share a kitchen at their current residence. Also, an updated Shelter Information form has not been provided to the ministry. Accordingly, the panel finds that information was not provided to show that the *Residential Tenancy Act* applies to the appellant's accommodation. Therefore, because the definition of “security deposit” in section 56(1) of the EAPWD Regulation only applies to accommodation to which the *Residential Tenancy Act* applies, the ministry was reasonable to decide that the appellant's request does not meet this definition.

The ministry and the panel are bound by the relevant legislation.

Conclusion

The panel finds that the ministry's determination that the appellant is not eligible for a supplement for a security deposit is reasonably supported by the evidence. The ministry's reconsideration decision is confirmed, and the appellant is not successful on appeal.

Appendix A

Relevant Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Disability assistance and supplements

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

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

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*, 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 disability assistance or hardship assistance if

- (a) the security deposit is necessary to enable the family unit to rent residential accommodation,
- (b) a recipient in the family unit 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) in accordance with section 74 (2.1).

(4) Repealed.

(5) For the purposes of subsection (3), “**security deposit**” includes a security deposit provided on or after April 1, 2002 under the

- (a) Disability Benefits Program Regulation, B.C. Reg. 79/97,
- (b) Income Assistance Regulation, B.C. Reg. 75/97, (c) Youth Works Regulation, B.C. Reg. 77/97, or (d) Repealed.

(6) Repealed. [B.C. Reg. 193/2017]

RESIDENTIAL TENANCY ACT

What this Act does not apply to

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,
- (e) living accommodation occupied as vacation or travel accommodation,
- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
 - (i) in a community care facility under the *Community Care and Assisted Living Act*,
 - (ii) in a continuing care facility under the *Continuing Care Act*,
 - (iii) in a public or private hospital under the *Hospital Act*,
 - (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
 - (v) in a housing based health facility that provides hospitality support services and personal health care, or
 - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- (h) living accommodation in a correctional institution,
- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, or
- (k) prescribed tenancy agreements, rental units or residential property.

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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)

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

Part H – Signatures

Print Name

Melissa McLean

Signature of Chair

Date (Year/Month/Day)

2023/08/06

Print Name

Inge Morrissey

Signature of Member

Date (Year/Month/Day)

2023/08/06

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2023/08/07