

**Part C – Decision Under Appeal**

The decision under appeal is a reconsideration decision of the Ministry of Social Development and Poverty Reduction (the “ministry”) dated August 1, 2023 (the “decision”). The decision denied the appellant’s request for a supplement for a security deposit.

**Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act* – Section 5 (the “Act”)  
*Employment and Assistance for Persons with Disabilities Regulation* - Section 56 (the “Regulation”)

*Residential Tenancy Act* – Sections 1 and 4 (the “RTA”)

(See attached Appendix for text of the above)

**Part E – Summary of Facts**

The hearing took place by teleconference on September 5, 2023. At the beginning of the hearing, no one from the ministry was present on the teleconference. The ministry was contacted. The panel was informed that no ministry representative was available to attend the hearing. As the appellant was present, the panel confirmed that the ministry had been notified of the hearing and proceeded with the hearing in the absence of the ministry as permitted by section 86(b) of the Regulation.

The evidence before the ministry at reconsideration was as follows:

- The appellant is a sole-recipient of disability assistance.
- On June 12, 2023, the appellant submitted an Intent to Rent form indicating that he was moving July 1, 2023, his rent would be \$850, he would share a kitchen and bathroom with the owner and that he required a security deposit of \$400.
- On June 12, 2023, the appellant had a phone conversation with a ministry worker and indicated that he would have his own bathroom and would use his own kitchen items including a microwave, hotplate and fridge. He would not share the kitchen or bathroom with the landlord.
- On July 6, 2023, a worker confirmed with the appellant's landlord that he would be sharing a kitchen and bathroom with her, and she is the owner of the residence.
- On July 6, 2023, the worker reviewed the appellant's request for a supplement to pay for a security deposit and determined that he was not eligible. The Regulation at section 56 (1) relies on the definition of "security deposit" under the RTA. The RTA section 4 says "This Act does not apply to (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation". The ministry holds that a security deposit can only be issued for units that are covered under the RTA.
- On July 13, 2023, the appellant submitted his request for reconsideration. He noted the very tough rental market where it is very hard to find a room at a fair price. He reported that he had to borrow money for the security deposit. He had no choice but to pay the deposit to secure a place to live. His alternative was to be homeless. The appellant noted that he will be obligated to repay the security deposit at \$20 per month, so it should not matter that the accommodation does not fall under the RTA.

On August 1, 2023, the ministry completed its decision. It denied the appellant's request for a supplement for a security deposit because the appellant's security deposit did not meet the definition of "security deposit" in the RTA, which is incorporated by reference in section 56 of the Regulation .

**Submission by the Appellant**

The appellant's Notice of Appeal states: "I disagree with the Ministry's reconsideration decision because I had to pay a deposit in order to secure a place to live. Sure, it is just a room and I have to share a bathroom and kitchen, but if I refused to pay a deposit then the landlord would just move on to the next person and I would be homeless. I can't afford \$1300 to meet the ministry... "(sentence not completed). During the hearing the appellant was asked how he would complete the above sentence from the Notice of Appeal. The appellant said he can't afford \$1300 (a month for rent) to meet the ministry requirement

for accommodation to which the RTA applies. This means he is not able to get a security deposit because he can only afford a room with shared facilities, as opposed to a private rental unit.

The appellant said he is on disability. He receives \$1200 from the Canada Pension Plan and \$300 for Person with Disabilities assistance, totally \$1500 per month. The rental market in his community is such that he cannot find a unit for less than \$1300 or \$1400 per month. He noted there is competition for what is available, with a lot of people applying for what there is. He noted a total of a dozen local listings. Most are bedroom rentals with shared bathroom and kitchen with the landlord. In this case he was able to find a room for \$850 a month, with shared kitchen and bathroom. The landlord required a security deposit of \$400. If he did not pay, he would lose the accommodation. He borrowed this money from his sister and then applied to the ministry for a security deposit. He noted he was aware a supplement for a security deposit would have to be repaid to the ministry and he intended to do this. He also noted he is under increasing pressure from his sister to repay this money.

The appellant says he can't pay back the security deposit because the ministry says it won't pay the security deposit supplement. He notes you have no choice if you are renting a room. He states his rent is "not bad" and one can be asked to pay over \$1,000. He says "You have no choice (but) to rent a room. You can't turn it down and be homeless. I don't understand why the ministry does not help if you are not covered by the housing act (the RTA)." The appellant says he understands that shared accommodation is not covered by the housing act (the RTA), but the ministry should help people. He says the law should change so that the legislation covers people who are renting a room. Had he not paid the deposit he would now be homeless as there is nothing out there right now. He notes he has never seen the homeless situation as bad as it is, and he has lived through periods where he would be homeless. He states he needs to be able to go to school and that he wishes something could be done to help people more.

When asked, the appellant said the ministry helped him with security deposits in the past. Once was for accommodation with a shared bathroom. Once was for a bachelor room with a bathroom and kitchen shared with other tenants. When asked, the appellant said there is some confusion with his current landlord. He notes he has his own bathroom. He could supply his own kitchen things like microwave and toaster oven, and this would be his preference. His landlord, however, does not want him to do this. He says he does not know why she does not want him to keep a separate kitchen space. He also commented on the extended absences of his landlord. When asked, the appellant noted that he is not related to the landlord.

The appellant expressed some frustration that the landlord insisted on sharing the kitchen with him and that she advised the ministry of the same. He noted if he could rely on his own kitchen equipment and bathroom (which is not shared) he would meet the ministry requirement for a security deposit. He noted his challenges with communicating with the ministry.

### **Submission by the Ministry**

The ministry did not submit any new information in response to the appeal. The ministry did not provide a representative for the hearing.

### **Admissibility of New Evidence**

Under section 22(4) of the Act, the panel has authority to admit new evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. In this case, neither party introduced new evidence. The ministry did not submit any new material in response to the appeal. The panel finds the appellant's appeal information and evidence at the hearing were consistent with statements already made in the appeal record and accordingly there is no new evidence to consider.

### **Findings of Fact**

The panel finds the following facts:

- The appellant is a sole recipient of Persons with Disabilities benefits.
- The appellant's monthly income is \$1500.
- The appellant entered into a rental agreement on July 1, 2023 for \$850 monthly. As part of the rental agreement, the landlord required him to provide a \$400 security deposit.
- The appellant would not have secured the accommodation had he not been able to pay the supplement.
- The appellant borrowed money from his sister for the \$400 security deposit. The appellant is seeking a security deposit supplement to reimburse his sister.
- The appellant shares a kitchen with the landlord when the landlord is home.

**Part F – Reasons for Panel Decision**

In this case, the panel must determine if the August 1, 2023 decision, which denied the appellant's request for a supplement for a security deposit is a reasonable application of the legislation in the circumstances of the appellant or is reasonably supported by the evidence.

**Appellant's Position**

The appellant holds that he should be eligible for a supplement for a security deposit even if his accommodation is not covered by the RTA. He cannot afford a rental unit that is covered by the RTA (which would allow him access to funds for a security deposit as it would meet the criteria set out in section 56 of the Regulation). He is in competition for whatever accommodation is available, and he needed to provide a security deposit or face homelessness.

**Ministry's Position**

At reconsideration, the ministry held that the appellant was not eligible for a security deposit supplement because he did not meet the legislated requirements under section 56 of the Regulation. This section states the minister may provide a security deposit to a family that is eligible for disability assistance if it is necessary to enable the family unit to rent residential accommodation, the recipient agrees in writing to repay the amount and the security deposit does not exceed 50% of the month's rent.

- The ministry was satisfied that the security deposit was necessary to enable the appellant to rent his residential accommodation.
- The ministry was satisfied that the amount of the security deposit, \$400, did not exceed 50% of the cost of the accommodation for one month at \$850.
- The ministry was not satisfied that the accommodation was subject to the RTA as accommodation involving a shared bathroom and kitchen is expressly excluded under section 4 of this Act.

The ministry stated: "As the RTA does not apply to your living situation, your request does not meet the definition of "security deposit" set out in section 56(1) of the EAPWD Regulation." As the appellant's accommodation is excluded from the application of the RTA by section 4, he did not satisfy all the criteria under section 56 of the Regulation. The ministry denied the appellant's request for a security deposit supplement.

**Reasoning of the Panel**

The panel considered the ministry's decision with regard to section 56 of the Regulation. Section 56(2) says the minister may provide a security deposit to or for a family unit that is eligible for disability assistance or hardship assistance if three conditions are met:

- The security deposit must be necessary to enable the family unit to rent residential accommodation. The ministry held that the security deposit was necessary to enable the appellant to rent his accommodation.
- The security deposit must not exceed 50% of one month's rent for the accommodation. The ministry was satisfied that the requested security deposit of \$400 is less than 50% of one month's rent at \$850.
- The recipient in the family unit must agree in writing to repay the amount paid under section 56. As the ministry ultimately rejected the applicant's request for a security deposit supplement, the question of whether the appellant would agree in writing to repay was not considered. The panel notes the appellant expected he would have to repay the amount of the supplement and was willing to do so. It is reasonable to assume that had he otherwise qualified for the supplement, the appellant would have complied with this requirement.

The panel found the ministry's determinations regarding section 56(2) to be a reasonable application of the Regulation in the circumstances of the appellant.

It is with regard to the ministry's interpretation and application of section 56(1) and the definition of "security deposit" that the panel found the ministry to be unreasonable. Section 56(1) of the Regulation incorporates by reference the RTA definition of "security deposit." Section 56(1) states:

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*.

Section 1 of the RTA defines "security deposit" 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)(i) [*regulations in relation to fees*];

Notably, the definition of "security deposit" does not reference any of the restrictions relating to various types of accommodations found elsewhere in the RTA. It is section 4 of the RTA that sets out those types of accommodation that are excluded from the application of the RTA. Section 4(c) states that living accommodation in which the tenant shares the bathroom or kitchen with the owner is excluded from the application of the RTA.

The ministry found that the appellant shares a kitchen and bathroom with the landlord, therefore he was not eligible for a security deposit as his living situation was not covered by the RTA. It is expressly

excluded by section 4(c). As the appellant did not satisfy all criteria under Section 56 of the Regulation, the ministry denied the appellant's request for a security deposit supplement.

It is the responsibility of the panel to determine whether the decision being appealed is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. In this case the panel does not view the ministry's decision to be a reasonable application of the Regulation in the circumstances of the appellant. Section 56(1) simply incorporates by reference the definition of "security deposit" from the RTA. As currently drafted, section 56(1) includes any form of security deposit that can be described as "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". There is no requirement under section 56, or elsewhere in the Regulation, that the accommodation for which the security deposit is sought be subject to the application of the RTA. Had the Regulation been drafted to specify that a "security deposit" means a "security deposit for those accommodations to which the RTA applies", the panel would have viewed the ministry's application of the requirements differently.

The panel does not find it reasonable that all of the RTA provisions now apply to section 56 of the Regulation only because this provision adopts by reference the definition of "security deposit." The panel notes that the ministry's current interpretation rules out provision of security deposits for what may be the only viable living option available to many ministry clients. As in the present case, many cannot afford accommodation that falls under the application of the RTA.

### **Conclusion**

The panel finds that the ministry's decision, that the appellant is not eligible for a supplement for a security deposit under section 56 of the Regulation, is not a reasonable application of the applicable enactment in the circumstances of the appellant. The panel rescinds the ministry decision and, therefore, the appellant is successful in the appeal.

**Appendix**

**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**

**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*.

(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. [B.C. Reg. 270/2019, App. 2, s. 11 (d).]

(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. [B.C. Reg. 270/2019, App. 2, s. 11 (d).]

(6) Repealed. [B.C. Reg. 193/2017, s. 5.]

**RESIDENTIAL TENANCY ACT**



## Definitions

1 In this Act:

"**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*];

## 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.

APPEAL NUMBER 2023-0250

**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  
Corrie Campbell

Signature of Chair

Date (Year/Month/Day)  
2023/09/11

Print Name  
Emily Drown

Signature of Member

Date (Year/Month/Day)  
2023/09/11

Print Name  
Gordon Thompson

Signature of Member

Date (Year/Month/Day)  
2023/09/08