



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PETER WALL MANSION & ESTATES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was the final, reconvened hearing from the original Dispute Resolution hearing set for May 13, 2021. This hearing was adjourned as per my Interim Decisions dated May 14, 2021, September 13, 2021, and January 7, 2022. The final, reconvened hearing was set down for April 5, 2022 at 9:30 AM.

On January 11, 2021, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the final, reconvened hearing, and M.G. attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed at the original hearing. As such, I have accepted the parties’ evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2018 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on April 30, 2020. Rent was established at \$2,800.00 per month and was due on the first day of each month. A security deposit of \$1,400.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence.

The Tenant advised that he is seeking compensation in the amount of **\$4,811.00** because his storage locker was broken into on February 24, 2019 and a number of items, including electronics, were stolen. He submitted that on or around February 17, 2019, the parkade gate was no longer closing during the nighttime, and when he reported it to management, he was told not to worry about it. He was subsequently informed by management on February 25, 2019 that his storage locker had been broken into.

It is his position that the Landlord did not secure the parkade when advised of this problem on February 17, 2019, that they did not inform the residents of the building that there was an issue with the gate, and that they did not repair the gate in a timely manner. He stated that when he attempted to speak with M.G. about the details of the theft on February 24, 2019, M.G. was combative and not forthcoming with any information. He referenced documentary and digital evidence submitted to support his position regarding his claims. As well, the Tenant made submissions on each of the items that he was claiming for in his monetary order worksheet.

M.G. advised that there were four gates to the building and that the main gate was broken one or two days before the locker break-in on February 24, 2019. He submitted that as soon as it was reported that the gate was broken, contractors were contacted that same day to initiate the repairs. However, it can take a significant amount of time to get parts. Regardless, he stated that the gate was repaired within the week. When he was asked about the specific dates for when the gate was repaired or whether there was any documentary evidence to support these submissions, M.G. was unable to provide any relevant or detailed information.

It should be noted that M.G.'s demeanor throughout the hearings would be generously described as confrontational and combative, and it was not entirely clear why he elected to act in this manner. Given that he submitted very little documentary evidence, it was clear that he was relying solely on his testimony. However, when his testimony was questioned for more specific and fulsome details, he appeared shocked as if he simply expected that his vague, general testimony would be sufficient.

It should also be noted that prior to each hearing, the parties attending the hearing would be introduced so that each party would know who was present. In addition, this is also important as it is not acceptable for unannounced parties to participate in a legal proceeding such as this, in secret. Near the end of the January 7, 2022 hearing, M.G. was overheard engaging in discussion with a person that had a distinctly female voice. When he was asked who he was speaking to, he stated that he was talking to himself. However, when it was then brought to his attention that witnesses or other parties were not permitted to participate unannounced and that it was obvious that he was clearly speaking to someone with a different voice, he quickly requested an adjournment to the proceedings.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, with respect to the issue of the broken gate, I find it important to note that M.G.'s demeanour during the hearings was consistently unreasonably hostile and combative, and this appeared to derive from a defensive attitude or belief that any of his general and unsupported testimony should not even be questioned or doubted. This combative demeanour is also consistent with the Tenant's submissions regarding his interactions with M.G.

In addition, given that M.G. was generally evasive during his testimony, and that he was untruthful when it was obvious that he was engaging in discussions with a party that was not permitted to be in the January 7, 2022 hearing, I find that there is a distinct lack of credibility and reliability to M.G.'s submissions on the whole. Without any corroborating documentary evidence of when the gate was fixed, I am skeptical that this was not an ongoing problem that the Landlord should be held negligent for.

However, when assessing the Tenant's claims for damages, I note that he is claiming for the original value of many of these items when it is clear they have likely greatly depreciated in value over time, and claiming for full replacement value is not reasonable. Furthermore, he has provided little documentary evidence to support the actual amounts of other items that he is seeking. More importantly, a key to the four-part test for determining damages is mitigation, and the Tenant acknowledged that he did not purchase any insurance to cover his contents.

For all of these reasons, I reject the Tenant's claims in the amounts that he is seeking. However, given that I have determined that the Landlord bears some responsibility for negligence in this matter, I find it appropriate to grant the Tenant a monetary award in the amount of **\$350.00**, which I have determined to be an amount commensurate with what the Landlord would have been responsible for had the Tenant had insurance, and thus responsible for the deductible amount.

As the Tenant was only partially successful in these claims, I find that the Tenant is entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenant**

Deductible equivalent	\$350.00
Filing fee	\$50.00
<b>TOTAL MONETARY AWARD</b>	<b>\$400.00</b>

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$400.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 13, 2022

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Residential Tenancy Branch