



# Civil Resolution Tribunal

Date Issued: May 2, 2024

Files: SC-2023-000374  
and SC-2023-003263

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Herr v. Bhullar*, 2024 BCCRT 420

B E T W E E N :

BUTA HERR and HARPREET HERR

**APPLICANTS**

A N D :

KARMJIT BHULLAR and JASWINDER BHULLAR

**RESPONDENTS**

A N D :

BUTA HERR and HARPREET HERR

**RESPONDENTS BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. These two linked disputes are about payment for rent, food, and childcare services. They consist of a claim and a counterclaim between the same parties, so I have issued one decision for both disputes. They are linked to two other disputes, SC-2023-000417 and SC-2023-003567, but the issues are different and not all of the parties are the same. So, I have issued separate decisions for those disputes.
2. In SC-2023-000374, Buta Herr and Harpreet Herr say Karmjit Bhullar and Jaswinder Bhullar have not paid them for rent and food as agreed. They claim \$5,000, without any breakdown. Mr. Herr represents the Herrs.
3. The Bhullars dispute the Herrs' claims, and say they are out of time under the *Limitation Act* in any event. In SC-2023-003263, the Bhullars counterclaim \$5,000 for unpaid childcare expenses, which the Herrs dispute. A lawyer, Gurpreet Bains, represents the Bhullars.

## JURISDICTION AND PROCEDURE

4. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find an oral hearing is not necessary in the interests of justice.

6. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

## **ISSUES**

7. The issues in these disputes are:
  - a. Whether any of the claims and counterclaim are out of time under the *Limitation Act*, and
  - b. If not,
    - i. Whether the Herrs are entitled to \$5,000 for rent and food, and
    - ii. Whether the Bhullars are entitled to \$5,000 for childcare services.

## **EVIDENCE AND ANALYSIS**

8. As the applicants in this civil proceeding, the Herrs must prove their claims on a balance of probabilities, meaning more likely than not. The Bhullars must prove their counterclaim to the same standard. I have read all the parties' submissions and evidence, but only refer to information I find necessary to explain my decision. The Bhullars did not submit any documentary evidence in either dispute, despite being given the chance to do so. In coming to my decision, I have considered the information submitted by the parties collectively in both disputes.
9. The background is largely undisputed. The parties are family members. Ms. Bhullar is Mrs. Herr's and Mr. Bhullar's mother, and Mr. Herr's mother-in-law. From June to November 2018, Ms. Bhullar lived with the Herrs in their family home. Between April and September, 2019, Mr. Bhullar and his wife, who is not a party to this dispute, lived with the Herrs.

10. The Herrs say the Bhullars were supposed to start paying for rent and food as soon as they “caught up with their bills”. They say this was based on a verbal agreement. But, the Herrs say the Bhullars left without paying.
11. The Bhullars deny there was any agreement to pay the Herrs for rent and food. They say they contributed to expenses by paying for groceries, doing household chores, and looking after the Herrs’ child. The Bhullars say this arrangement was based on a “mutual understanding”.
12. I turn to the Bhullars’ counterclaim. Although it was filed in both of their names, the Bhullars’ submissions make it clear the counterclaim is based on an agreement they say Ms. Bhullar alone had with the Herrs to provide childcare services. So, I find Mr. Bhullar lacks standing (the legal right) to bring this breach of contract claim, and I dismiss his counterclaim.
13. Ms. Bhullar says for the five months she lived with the Herrs, she provided childcare services to them for \$1,000 a month, on the basis of a verbal agreement. The Herrs deny the counterclaim. They say their babysitters and the daycare their child attended part-time provided their childcare services.

### ***Limitation Act***

14. The Bhullars say the Herrs’ claims are out of time under the *Limitation Act*. Although the Herrs did not raise this defence to the Bhullars’ counterclaim, I have considered whether the *Limitation Act* also applies to it. I did not seek additional submissions from the Bhullars on the *Limitation Act*, because I find the fact that they raised it in the main claim shows they were alive to the issue, and because a lawyer represents them.
15. CRTA section 13 says the *Limitation Act* applies to CRT claims. The *Limitation Act* section 6 says the basic limitation period to file a claim is two years after the claim is “discovered”. Under section 8, a party discovers a claim when they knew, or reasonably should have known, that they had a claim against another party, and that a court or tribunal proceeding was an appropriate remedy. When the limitation period

expires, the right to bring the claim ends, even if the claim would have otherwise been successful.

16. The Herrs say they filed their claims only once they realized the Bhullars were not going to pay for rent and food as they allegedly agreed. The Herrs filed their application for dispute resolution on January 12, 2023. As noted above, Ms. Bhullar moved out around November 2018. The Herrs say Mr. Bhullar moved out on October 1, 2019, and I accept that he did. However, I find it is unlikely the Herrs only realized the Bhullars were not going to pay between three and four years after each of them moved out.
17. Instead, I find the Herrs likely discovered their claim against Ms. Bhullar on November 30, 2018, and their claim against Mr. Bhullar on October 1, 2019. This means they had until November 30, 2020 to file a claim against Ms. Bhullar and until October 1, 2021 to file a claim against Mr. Bhullar. The Herrs have not provided any evidence or explanation to support later discovery dates or an extension of the limitation period, such as an acknowledgement of the debt. So, I find the Herrs' claims were out of time when they filed their application for dispute resolution on January 12, 2023, and I dismiss them.
18. Next, the counterclaim. Ms. Bhullar says the Herrs owe her \$5,000 for childcare services she provided while she lived with them in 2018. Ms. Bhullar filed her counterclaim on March 22, 2023. This means she must have discovered her claim no earlier than March 22, 2021 in order to have filed her claim within the two-year limitation period. Similar to the Herrs, I find Ms. Bhullar likely discovered her claim around the time she moved out of their house. There is no evidence of Ms. Bhullar's November 2018 move-out date, so I have used November 30, the last day of the month, to calculate the limitation period. Again, I find Ms. Bhullar has not provided any evidence or explanation to support a later discovery date or an extension of the limitation period. So, I find her claim expired on November 30, 2020, well before she filed her counterclaim.

19. I note section 22(1) of the *Limitation Act* allows a party to bring a counterclaim if it is connected or related to the main claim, even if the applicable limitation period for the counterclaim has expired. However, this is only the case where the main claim was filed within the limitation period. Here, I have found the Herrs' claim was not filed within the applicable limitation period. So, I find section 22(1) does not apply. I dismiss Ms. Bhullar's counterclaim.
20. Even if I had not concluded that both the Herrs' claims and Ms. Bhullar's counterclaim were out of time, I would have dismissed them for the following reasons.
21. The Herrs provided no documentary evidence to support the rent and food agreement they describe. They also give no indication of when the alleged agreement was to start based on the Bhullars paying off their bills. They do not say what the agreed monthly rent was, or how much the Bhullars were supposed to pay for food. So, I would have found the Herrs had not proven their claim for rent and food.
22. As noted above, the Bhullars provided no documentary evidence at all. Apart from saying she looked after the Herrs' child when they were at work and sometimes when they were busy with chores, Ms. Bhullar does not explain how often she provided these services, or what her responsibilities involved. The Herrs submitted letters from their babysitter and daycare provider in support of their position that they did not have a childcare agreement with Ms. Bhullar. Based on this, I would have found the parties did not have an agreement for childcare services as Ms. Bhullar says.
23. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The parties were equally unsuccessful, so I find they are each responsible for their own CRT fees and dispute-related expenses. This includes the Bhullars' \$5,500 claim for legal expenses, which they did not provide evidence of in any case.

## **ORDER**

24. I dismiss the Herrs' claims, the Bhullars' counterclaim, and these disputes.

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Megan Stewart, Tribunal Member