



# Civil Resolution Tribunal

Date Issued: June 14, 2021

File: SC-2021-000318

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shaikh v. Choudhury*, 2021 BCCRT 654

BETWEEN:

MOHSIN SHAIKH

**APPLICANT**

AND:

TAHSIN CHOUDHURY, TAYSIR CHOUDHURY, and  
ASHFAQUE SAMI

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about allegedly unpaid rent and utilities.
2. The applicant, Mohsin Shaikh, says the respondents, Ms. Tahsin Choudhury, Mr. Taysir Choudhury, and Mr. Ashfaque Sami, did not pay their share of utilities between October 2020 and February 2021. Mr. Shaikh also says Mr. Sami failed to pay rent

in December 2020 and January 2021. Mr. Shaikh claims a total of \$1,474, made up of \$574 for the unpaid utilities and \$900 for Mr. Sami's unpaid rent.

3. The respondents agreed in their Dispute Responses that they owed November and December 2020 utilities, but in submissions they argue that the utilities up to January 2021 have now been paid. They say they moved out in February, so they owe nothing more. Mr. Sami said in his Dispute Response that he did not pay January 2021 rent on time, but in his submissions he says his rent is caught up.
4. I find there are potential issues about whether Mr. Shaikh has standing to bring this dispute against the respondents and whether the CRT has jurisdiction to decide the dispute. I discuss these issues further below.
5. Mr. Shaikh is self-represented. Ms. Choudhury represents all 3 respondents.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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.
7. Section 39 of the CRTA 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 that 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 that an oral hearing is not necessary in the interests of justice.
8. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would

be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
10. The parties' submissions and evidence indicate that this dispute involves a residential tenancy. The CRT generally does not have jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). The RTB has exclusive jurisdiction over matters falling within the *Residential Tenancy Act* (RTA). I will address this issue further below.
11. I note that the respondents submitted their evidence after the deadline. Mr. Shaikh was given the opportunity to review and provide submissions about the late evidence. Mr. Shaikh did not object to the late evidence being admitted, and I find it is relevant to this dispute. Given the CRT's mandate of flexibility, I admit the late evidence and where relevant I discuss it below.

## **ISSUES**

12. The issues in this dispute are:
  - a. Does Mr. Shaikh have standing to bring this dispute?
  - b. Is this a tenancy dispute over which the CRT has jurisdiction?
  - c. If yes, do the respondents owe Mr. Shaikh for unpaid utilities and rent?

## **EVIDENCE AND ANALYSIS**

13. In a civil proceeding like this one, as the applicant, Mr. Shaikh must prove his claims on a balance of probabilities. I have read all the parties' evidence and submissions,

but I refer only to the evidence and arguments that I find relevant to provide context for my decision.

***Does Mr. Shaikh have standing to bring this dispute?***

14. Initially, none of the parties to this dispute explained the context or details of the respondents' tenancy agreement with Mr. Shaikh. There was no written agreement in evidence, nor any evidence about a verbal agreement between Mr. Shaikh and the respondents. It was unclear when the respondents' tenancy began or when precisely it ended.
15. The respondents filed an audio recording of a conversation between Mr. Shaikh and all 3 respondents, as well as a fifth unidentified person. On the recording, Mr. Shaikh described the residence where the respondents were living as his "rental property" and said he has to pay "a mortgage". However, from the context of their conversation, it is unclear whether Mr. Shaikh lived in the residence himself, as he was unaware of how long the respondents had been living in the house or even what part of the house they were living in.
16. The banking records in evidence show that the respondents sent e-transfer payments for rent to HG, who I infer was the unidentified person on the recording. Mr. Shaikh referred to HG on the recording as the person who collects rent on his behalf. Mr. Shaikh also appeared to have no independent knowledge of each respondent's monthly rent or utilities obligations and deferred to HG for information about the respondents' alleged late payments.
17. As noted, residential tenancies are generally governed by the RTA and disputes that arise are decided by the RTB. There are some exceptions set out in section 4 of the RTA, where the RTA does not apply to certain tenancies. For example, RTA section 4(c) says the RTA does not apply to living accommodation in which a tenant shares bathroom or kitchen facilities with the accommodation's owner. The RTB generally refuses jurisdiction over such roommate disputes.

18. Given it was unclear on the evidence whether this was such a roommate dispute, I asked the parties to provide submissions on whether the CRT had jurisdiction. In response, Mr. Shaikh said only that “we all have lived together”. He also provided copies of 2 residential tenancy agreements.
19. The first agreement was between a third party, HB, as the landlord and Mr. Shaikh with another third party as the tenants of the residence in question. The agreement was for a fixed term tenancy between September 1, 2018 and August 31, 2019, with monthly rent of \$3,200, which did not include utilities. Mr. Shaikh’s tenancy status after the fixed term ended in August 2019 is unclear.
20. The second agreement was between HG as the landlord and Mr. and Ms. Choudhury as the tenants. It was also a fixed tenancy agreement between July 1, 2019 and June 30, 2020. The agreement said rent was \$1,400 per month, and electricity and natural gas were to be included in the rent. Mr. Shaikh says that Mr. Sami was not included in this agreement because he moved in later.
21. Based on all the evidence before me, I find that the respondents’ tenancy agreement was with HG, not Mr. Shaikh. It was HG who signed the agreement as the landlord, and HG who collected the respondents’ rent and utilities payments. Notably, there is no statement from HG in evidence. Whether HG had any agreement with Mr. Shaikh or the “real” landlord, HB, is not before me.
22. The legal doctrine called “privity of contract” says that as a general rule, a contract cannot give rights or impose obligations on any person except the parties to that contract. I find there is insufficient evidence before me to show that HG entered the tenancy agreement with the respondents on Mr. Shaikh’s behalf as his agent or as part of a trust arrangement. So, I find that Mr. Shaikh has no rights or obligations under the respondents’ tenancy agreement.
23. As Mr. Shaikh was not a party to the residential tenancy agreement with the respondents, I find that Mr. Shaikh has no standing to enforce the contract’s terms in this dispute. On this basis, I dismiss Mr. Shaikh’s claims.

24. Under the circumstances, I find the question of whether this is a “roommate dispute” over which the CRT has jurisdiction or a residential tenancy under the jurisdiction of the RTA, is irrelevant. This is because Mr. Shaikh is the applicant in this dispute, and he has no contract with the respondents and there is no other legal basis to order the respondents to pay him the amounts claimed. The jurisdiction issue is only relevant between the respondents and HG, with whom they had their agreement (or potentially HB, as the real landlord). As HG is not a party to this dispute, I make no findings about the jurisdiction issue or whether the respondents owe any money under their agreement with HG.
25. 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. I see no reason in this case not to follow that general rule. Here, the respondents are the successful parties, but they did not pay any fees or claim any dispute-related expenses. I dismiss the applicant’s claim for CRT fees.

## **ORDER**

26. I dismiss Mr. Shaikh’s claims and this dispute.

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Kristin Gardner, Tribunal Member