



# Civil Resolution Tribunal

Date Issued: April 29, 2022

File: SC-2021-008595

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. Thayer (dba Bully's Landscaping & Turf Farm)*,  
2022 BCCRT 505

B E T W E E N :

FORTISBC ENERGY INC.

**APPLICANT**

A N D :

LORNE THAYER (Doing Business As BULLY'S LANDSCAPING &  
TURF FARM)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about recovery of repair costs. The applicant, FortisBC Energy Inc. (Fortis), says the respondent, Lorne Thayer (dba Bully's Landscaping & Turf Farm), damaged a service header (gas line). Fortis claims \$1,350.67 for repair costs.
2. Mr. Thayer denies responsibility, saying Fortis' gas line was "not down to the proper depth". Mr. Thayer says he owes nothing.
3. Fortis is represented by an employee. Mr. Thayer is self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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). CRTA section 2 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.
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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.
6. CRTA section 42 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.

7. 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.

## **ISSUE**

8. The issue in this dispute is whether Mr. Thayer's crew damaged Fortis' service header (gas line), and if so, whether Fortis is entitled to reimbursement of \$1,350.67 for repair costs.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Fortis must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note Mr. Thayer chose not to provide any documentary evidence despite having the opportunity to do so.
10. The evidence shows Mr. Thayer operated a landscaping business. On July 3, 2016, the property's homeowner JM contacted Fortis through a BC One Call ticket to request permission to dig. The ticket shows the type of work was described as concrete work on a residential property, rear and front. The depth was "1.2192" and there is a "hand dig" notation. The instructions accompanying the ticket say when excavating, the person must "hand dig to expose the line at several locations to determine its exact location and depth before using any mechanized excavation equipment". This is also set out in section 39(7) of the *Gas Safety Regulation* that was attached to the ticket.
11. For reasons that are not explained, Mr. Thayer was digging over 4 years later, in October 2020, with a new homeowner. At the time Mr. Thayer was digging, the 2016 ticket was expired.

12. Fortis says Mr. Thayer's crew damaged its gas line with an excavator. Fortis submitted an October 26, 2020 report from its investigator, Mark Lawson. Mr. Lawson noted the excavator operator that hit the gas line was Mr. Thayer's employee MC. Mr. Lawson wrote that MC said he was digging with the excavator and trying to locate sand or gravel that would indicate he was getting closer to the gas line. Mr. Lawson wrote MC said he hit the gas line in this process and that he did not locate the line with a shovel. Mr. Lawson wrote the gas line's depth was about .55 meters, as also shown on a sketch document in evidence. I accept this evidence, as it is also shown by photos in evidence of the dug trench and a tape measure inside it.
13. Fortis says the requirement is that the person hand dig across boundary limits of the local area in cuts no more than 0.3m deep. This is shown on the BC One Call ticket.
14. Fortis says the depth of the gas service line was within Fortis requirements. While Mr. Thayer says it was not, I do not accept that unsupported and vague assertion. Mr. Thayer argued that MC was the one that hit the pipe and "he is a witness that it was not correct". Yet, as noted, Mr. Thayer submitted no witness statements and no supporting evidence at all. Mr. Thayer also did not explain why MC did not hand dig as required or why Mr. Thayer is not responsible for the damage given the failure to first identify the gas line by hand digging.
15. I turn to the applicable law. To prove liability in negligence, Fortis must show that Mr. Thayer owed it a duty of care, that Mr. Thayer breached the standard of care, that Fortis sustained a loss (damages), and that Mr. Thayer's breach caused the loss: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
16. I find Mr. Thayer, in having his employee MC dig, clearly owed Fortis a duty of care as someone working around Fortis gas lines. I find the applicable standard of care was to take reasonable care not to damage Fortis' gas line. I find the reasonable steps are those set out in the BC One Call ticket and the Gas Safety Regulation, which included hand digging until the gas line was exposed. MC's excavation undisputedly burst the gas line which led to the claimed damages for repair.

17. I find Fortis has proved that Mr. Thayer's employee MC was negligent when he used an excavator without hand digging and damaged Fortis' gas line, contrary to the ticket instructions and the *Gas Safety Regulation*. I find Mr. Thayer is vicariously responsible for MC's conduct and must pay Fortis' proven damages. Given this conclusion, I do not need to address Mr. Thayer's decision to dig on an expired ticket, noting also that Mr. Lawson said Fortis' gas line was located as shown on that ticket.
18. Mr. Lawson said the gas was under control in about 30 minutes from the Fortis crew arriving. Fortis' March 27, 2021 invoice for \$1,350.67 charged: \$81.09 for "vehicles", \$827.18 for Fortis labour/fieldwork, and \$442.40 for "3<sup>rd</sup> Party Contractors". Given the extent of the work required to repair the damage, and because Mr. Thayer does not dispute the amount charged, I accept the \$1,350.67 is reasonable for repairs. I order Mr. Thayer to pay this amount.
19. The *Court Order Interest Act* (COIA) applies to the CRT. I find Fortis is entitled to pre-judgment interest under the COIA on the \$1,350.67. Calculated from March 27, 2021 to the date of this decision, this interest equals \$6.63.
20. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Fortis was successful, I allow its claim for reimbursement of \$125 in CRT fees. No dispute-related expenses were claimed.

## **ORDERS**

21. Within 21 days of this decision, I order Mr. Thayer to pay Fortis a total of \$1,482.30, broken down as follows:
  - a. \$1,350.67 in damages,
  - b. \$6.63 in pre-judgment interest under the COIA, and
  - c. \$125 in CRT fees.

22. Fortis is entitled to post-judgment interest, as applicable.
23. Under section 48 of the CRTA, the CRT will not provide the parties with the order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.
24. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of BC.

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Shelley Lopez, Vice Chair