



# Civil Resolution Tribunal

Date Issued: May 9, 2022

File: SC-2021-008787

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. Fischer*, 2022 BCCRT 548

BETWEEN:

FORTISBC ENERGY INC.

**APPLICANT**

AND:

HERBERT FISCHER

**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, Herbert Fischer, damaged a gas service line. Fortis claims \$2,341.66 for repair costs.
2. Mr. Fischer says Fortis' gas line was 4'5" "out of the line" in the design plan. Mr. Fischer says Fortis installed the gas line on the north side of a hydro pole, an area he says was supposed to be free for his installation of an underground power line.
3. Fortis is represented by an employee. Mr. Fischer 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 to what extent, if any, must Mr. Fischer pay Fortis \$2,341.66 for the repairs Fortis completed to a damaged gas service line.

## **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.
10. In February 2021, Mr. Fischer began digging with an excavator to install an underground powerline. He did not call BC 1 Call first nor did he hand-dig to expose the gas line first. None of this is disputed.
11. I turn next to the applicable law. Without using these words, Fortis essentially alleges Mr. Fischer was negligent, resulting in the damage to Fortis’ gas service line. To prove liability in negligence, Fortis must show that Mr. Fischer owed it a duty of care, that Mr. Fischer breached the standard of care, that Fortis sustained a loss (damages), and that Fischer’s breach caused the loss: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
12. I find Mr. Fischer clearly owed Fortis a duty of care as a homeowner working around Fortis gas lines. I find the applicable standard of care was to take reasonable care not to damage Fortis’ gas line. Mr. Fischer was undisputedly required to contact BC 1 Call before digging and he did not do so. None of this is disputed.
13. I acknowledge Mr. Fischer’s submission that his project started in early 2019 with “numerous calls to Fortis and designer” who knew of his intention to locate his

underground powerline on the south side of the power pole. Yet, he submitted no evidence of those calls. In any event, that would not meet Mr. Fischer's obligations under section 39 of the *Gas Safety Regulation*, which requires Mr. Fischer to make his request at least 2 business days before digging and for him to receive confirmation from Fortis he can proceed, within 10 days before beginning excavation. For clarity, the BC 1 Call fulfills the *Gas Safety Regulation* requirement.

14. As noted, Mr. Fischer undisputedly used a mini-excavator to start digging and did not hand dig first. He says the damage resulted because Fortis installed the gas line in a different spot than set out on a design plan. Yet, there is no evidence that Fortis was obliged to follow that designer's plan. In any event, since Mr. Fischer undisputedly did not call BC 1 Call as required to identify the gas main's location before attempting to dig, I find he breached the standard of care. It is undisputed that Mr. Fischer's digging caused the gas line damage. In short, I find Mr. Fischer was negligent and his negligence damaged Fortis' gas line.
15. Fortis' April 10, 2021 invoice is for the claimed \$2,341.66. It specifies \$300.21 for vehicles, \$2,003.69 for Fortis labour/fieldwork, and \$37.76 for "other". Fortis' submitted "breakdown" shows the \$37.76 is for "overtime meal". I do not allow the overtime meal as I find no legal basis to hold Mr. Fischer responsible for Fortis' workers' meal breaks.
16. I find the rest of the Fortis invoice is reasonable, which covers 4 crew at overtime rates (16.50 hours total) and various equipment. I note Mr. Fischer does not dispute the hours or number of vehicles and crew members required. I find Mr. Fischer must reimburse Fortis \$2,303.90 (\$2,341.66 - \$37.76).
17. The *Court Order Interest Act* (COIA) applies to the CRT. I find Fortis is entitled to pre-judgment interest under the COIA on the \$2,303.90. Calculated from Fortis' April 10, 2021 invoice date to the date of this decision, this interest equals \$11.19.
18. 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**

19. Within 21 days of this decision, I order Mr. Fischer to pay Fortis a total of \$2,440.09, broken down as follows:
  - a. \$2,303.90 in damages,
  - b. \$11.19 in pre-judgment interest under the COIA, and
  - c. \$125 in CRT fees.
20. Fortis is entitled to post-judgment interest, as applicable.
21. 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.
22. 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