



Civil Resolution Tribunal

Date Issued: July 18, 2022

File: SC-2022-001257

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. 1231805 B.C. Ltd.*, 2022 BCCRT 818

BETWEEN:

FORTISBC ENERGY INC.

APPLICANT

AND:

1231805 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about recovery of repair costs. The applicant, FortisBC Energy Inc. (Fortis), says the respondent, 1231805 B.C. Ltd. (123), damaged a gas line. Fortis

claims \$2,338.69 for repair costs, though in reply submissions Fortis says it is happy to remove a \$27.45 meal charge, leaving a \$2,311.24 claimed balance. Fortis says 123 failed to hand dig first to identify the gas line as required.

2. 123 says Fortis' crew marked the gas lines at the street level only, 50 meters away from where digging took place. 123 says had Fortis marked the gas line from the street all the way up to the gas meter, 123 would have known the gas line's location and would have had to guess while digging. Fortis says 123 waited 8 months to dig after Fortis fully marked the gas line and should have asked for re-marking before digging. 123 also says some portions of Fortis' bill are inappropriate charges. 123 says its liability is limited to \$659.42.
3. Fortis is represented by an employee. 123 is represented by GA, an employee or principal.

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. Some of the evidence in this dispute amounts to a "he said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 is whether 123 must pay Fortis \$2,311.24 for repair services to a damage gas line.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Fortis must prove its claim on a balance of probabilities (meaning "more likely than not"). I have read the parties' submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. On April 14, 2020, 123's representative GA contacted Fortis and obtained a BC 1 Call ticket. The ticket said work was to begin April 13, 2020. The ticket identified gas mains but also said in a bolded warning box, "ATTENTION: DO NOT RELY ON THIS INFORMATION ALONE! You must hand dig to expose the line at several locations to determine the exact location and depth before using any mechanized equipment. All locations are approximate only. ... FortisBC will not accept responsibility for errors or omissions." The hand digging requirement is also set out in section 39 of the *Gas Safety Regulation* (Regulation).

11. On December 24, 2020, 8 months after obtaining the ticket, 123 started digging and the gas line broke. GA submits he has “never denied wrong doing at my part, and still agree that it was me who pulled the trigger, but the gun was loaded and handed over to me” by Fortis (quote reproduced as written). 123’s position is that when it started to dig the line was not clearly marked, and when it had been marked it was poorly done.
12. I acknowledge 123 says Fortis failed to mark the line all the way to the gas meter. Fortis says it did fully mark the line and that because 123 waited 8 months to begin digging, the line had washed away or been otherwise disturbed. I find Fortis’ explanation likely. In any event, under the Regulation, 123 had an obligation to ensure it knew where the gas line was before it began machine digging. It undisputedly did not.
13. I also note 123’s sole item of documentary evidence is an undated photo of what I infer is the area that was dug. It is a mixture of dirt, gravel, and what appears to be overgrown weeds. I find 123’s other allegation of uneven marking unsupported and I do not accept it.
14. I turn next to the applicable law. Without using these words, Fortis essentially alleges 123 was negligent, resulting in the damage to Fortis’ gas service line. To prove liability in negligence, Fortis must show that 123 owed it a duty of care, that 123 breached the standard of care, that Fortis sustained a loss (damages), and that 123’s breach caused the loss: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
15. I find 123 clearly owed Fortis a duty of care as a trade or homeowner working around Fortis gas lines. I find the applicable standard of care was to take reasonable care not to damage Fortis’ gas line. 123 was undisputedly required to contact BC 1 Call before digging and GA did so. GA undisputedly received the BC 1 Call information about what was required for hand-digging.

16. 123 undisputedly did some spot digging by hand, but when it could not locate the gas line it went ahead and “guessed” and used an excavator. It is undisputed 123’s digging caused the gas line damage.
17. I find the evidence shows 123 failed to comply with its obligations under the Regulation. 123 did not hand dig until the line was exposed. I find 123 was negligent and its negligence caused the gas line damage.
18. I turn then to Fortis’ claimed damages.
19. Fortis’ March 21, 2021 invoice is for \$2,338.69. The breakdown is:
 - a. \$112.12 for vehicles (1 heavy duty truck and 1 medium duty truck),
 - b. \$1,306.72 for Fortis labour at regular time (4 hours for 1 crew leader, 3 hours for 1 customer service tech, and 4 hours for 1 distribution mechanic),
 - c. \$892.40 for 3rd party contractors, including \$450 for an excavator rental, and
 - d. \$27.45 for meals/coffee.
20. As noted above, Fortis says it is happy to forego the \$27.45 charge for meals. I find that charge is inappropriate and so I do not allow it.
21. 123 argues the excavator was unused and therefore unnecessary. In the absence of an expert opinion to the contrary, I find it reasonable for Fortis to send an excavator in the emergency situation, even if it was ultimately unused. I also find the other charges reasonable and I allow them. In short, I find 123 must pay Fortis a total of \$2,311.24.
22. Since Fortis expressly waives its entitlement to interest, I make no order for interest under the *Court Order Interest Act*.
23. 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 find it is entitled to reimbursement of \$125 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

24. Within 21 days of this decision, I order 123 to pay Fortis a total of \$2,436.24, broken down as follows:

- a. \$2,311.24 in damages, and
- b. \$125 in CRT fees.

25. Fortis is entitled to post-judgment interest, as applicable.

26. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Acting Chair and Vice Chair