



Civil Resolution Tribunal

Date Issued: August 4, 2022

File: SC-2021-008375

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. Hunniford*, 2022 BCCRT 879

B E T W E E N :

FORTISBC ENERGY INC.

APPLICANT

A N D :

BRENT HUNNIFORD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about recovery of repair costs. In May 2020, the respondent, Brent Hunniford, damaged a gas line owned by the applicant, FortisBC Energy Inc.

(Fortis). Fortis claims \$3,877.54 as the balance owing for its repair costs. Fortis says Mr. Hunniford failed to have a current BC 1 Call ticket and failed to hand-dig to identify the gas line as required.

2. Mr. Hunniford says Fortis gave him incorrect information about the gas line's location but does not dispute he dug with an excavator without hand-digging first and without a current BC 1 Call ticket. Mr. Hunniford says he should not have to pay anything further given Fortis gave him incorrect information.
3. Fortis is represented by an employee. Mr. Hunniford 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. 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.
8. In this dispute, Fortis incorrectly named itself as “Fortis Energy Inc”. As set out in multiple prior CRT disputes and in a BC Company Summary before me in this dispute, the correct corporate name is FortisBC Energy Inc. Given this evidence and the fact both parties clearly operated on the basis that FortisBC Energy Inc. is the correct applicant, I have amended the style of cause above accordingly.
9. Next, Fortis submitted evidence past the CRT’s deadline. Bearing in mind the CRT’s flexible mandate, I allow this late evidence since Mr. Hunniford was not prejudiced by it as he had the opportunity to comment on it. That said, nothing turns on this late evidence about Mr. Hunniford’s call to Fortis in June 2020, given that call occurred after Mr. Hunniford undisputedly hit the gas line in May 2020.

ISSUE

10. The issue is whether Fortis is entitled the claimed \$3,877.54 in repair costs.

EVIDENCE AND ANALYSIS

11. 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 reviewed the parties’ submitted evidence and arguments, but only refer to what is necessary to give context to my decision.
12. Mr. Hunniford is a homeowner. He says that in October 2018 a fence contractor obtained from Fortis a printout of the gas line. Mr. Hunniford says the contractor also asked Mr. Hunniford to remove the old fence. Mr. Hunniford was ill for over a year, and then in May 2020 he started to tear down the old fence with a rental bobcat, after viewing the map he had “advising where the gas line was”. In doing so, Mr. Hunniford hit the gas line and damaged it. None of this is disputed.

13. As noted, Mr. Hunniford says the gas line was incorrectly identified on the map he was given. I cannot determine this based on Mr. Hunniford's submitted photos of the map. In any event, Mr. Hunniford undisputedly did not have a current BC 1 Call ticket, valid within 10 days of his beginning to dig in May 2020. He also undisputedly did not hand dig to expose the gas line before he used the excavator. Both of those things are required under the *Gas Safety Regulation* (Regulation).
14. Without using these words, Fortis essentially alleges Mr. Hunniford was negligent, resulting in the damage to Fortis' gas service line. To prove liability in negligence, Fortis must show that Mr. Hunniford owed it a duty of care, that he breached the standard of care, that Fortis sustained a loss (damages), and that Mr. Hunniford's breach caused the loss: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
15. I find Mr. Hunniford clearly owed Fortis a duty of care as property owner working around Fortis gas lines. I find the applicable standard of care was to take reasonable care not to damage Fortis' gas line. As referenced above, Mr. Hunniford failed to comply with the Regulation requirements. I find he was negligent and that his negligence caused Fortis' claimed loss.
16. I turn then to Fortis' claimed damages.
17. Mr. Hunniford paid Fortis' charges "in full" in September or October 2020. However, he also received the funds back as Fortis agreed he could have a payment plan due to financial constraints. Mr. Hunniford made \$700 in payments but then stopped. The balance owing is the claimed \$3,877.54. None of this is disputed. Fortis did not submit a copy of its invoice, which ordinarily would be fatal to Fortis' claim, given that it also provided no breakdown of its charges either. Parties are told to submit all relevant evidence and Fortis' invoice and associated breakdown for the claimed repair costs is clearly relevant. In other words, Fortis has arguably failed to prove its damages.
18. However, significantly, Mr. Hunniford does not challenge the amount of work Fortis did or the amount of its invoice. There is no evidence Mr. Hunniford ever disputed

the charges before this CRT dispute began. In this dispute, his defence is that he should not have to pay more than he already has because he asserts Fortis gave him an incorrect map of the gas line, an issue I have addressed above. Given this and Mr. Hunniford's past payment of the full amount and later failed completion of the agreed payment plan, I find Fortis' damages proven in these circumstances. I find Mr. Hunniford must pay Fortis the claimed \$3,877.54.

19. I acknowledge Mr. Hunniford's further submission that he is on a fixed income and cannot afford to pay more. However, his inability to pay does not disentitle Fortis to an order for proven negligence and damages.
20. The *Court Order Interest Act* (COIA) applies to the CRT. I find Fortis is entitled to pre-judgment interest on the \$3,877.54, under the COIA. Calculated from June 30, 2021 to the date of this decision, this interest equals \$23.77. I find June 30 is a reasonable date because Fortis allowed Mr. Hunniford to make payments until that date before pursuing this dispute and because I have no invoice in evidence before me.
21. 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 \$175 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

22. Within 21 days of this decision, I order Mr. Hunniford to pay Fortis a total of \$4,076.31, broken down as follows:
 - a. \$3,877.54 in damages,
 - b. \$23.77 in pre-judgment interest under the COIA, and
 - c. \$175 in CRT fees.
23. Fortis is entitled to post-judgment interest, as applicable.

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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of BC.

Shelley Lopez, Acting Chair and Vice Chair