



Civil Resolution Tribunal

Date Issued: September 27, 2022

File: SC-2022-002158

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. 666 Construction Ltd.*, 2022 BCCRT 1059

B E T W E E N :

FORTISBC ENERGY INC.

APPLICANT

A N D :

666 CONSTRUCTION LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about recovery of repair costs. The applicant, FortisBC Energy Inc. (Fortis), says that on June 15, 2021 the respondent, 666 Construction Ltd. (666),

damaged a gas line in Burnaby, BC. Fortis claims \$1,714.66 for repair costs. Fortis says 666 did not have a BC 1 Call Ticket and failed to properly identify the gas line as required.

2. In its Dispute Response filed at the outset of this proceeding, 666 denied damaging the gas line and said it was working elsewhere at the time. 666 later chose to not provide any documentary evidence or written arguments.
3. Fortis is represented by an employee. 666 is represented by AZ, 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. 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. Must 666 pay Fortis \$1,714.66 for repair services to a damaged 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. Again, 666 chose not to provide any evidence or written arguments, despite having the opportunity to do so.
10. Fortis submitted a June 24, 2021 damage investigator report prepared by its employee TG. TG’s report outlines the relevant facts, as follows.
 - a. On June 15, 2021, Fortis receive a report of a “hit gas line” at the Burnaby address.
 - b. A contractor had pounded a wooden stake into the plastic gas line, while preparing forms for concrete.
 - c. Fortis’ investigator, TG, spoke with the homeowner WT who advised they had hired 666 to do the landscaping.
 - d. WT advised the gas line was not exposed and there was no BC 1 Call Ticket.
11. Fortis did not submit a witness statement from TG or WT. However, I accept TG’s report observations as accurate because I accept it was a routinely created business record. I also do not accept 666’s unsupported assertion in its Dispute Response that it was working elsewhere, since 666 chose not to participate further in this proceeding. I draw an adverse inference against 666 because if it had been

working elsewhere on June 15, 2021 I find 666 likely would have submitted evidence to show that. I find 666 damaged the gas line as claimed.

12. I turn next to the applicable law. Without using these words, Fortis essentially alleges 666 was negligent, resulting in the damage to Fortis' gas service line. To prove liability in negligence, Fortis must show that 666 owed it a duty of care, that 666 breached the standard of care, that Fortis sustained a loss (damages), and that 666's breach caused the loss: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
13. Fortis is a sophisticated litigant and has submitted no evidence in this dispute to prove 666's method of digging was negligent. Ordinarily, this might be fatal to an applicant's claim. However, in prior CRT decisions I have set out the obligation to hand dig first to expose a gas line along with the obligation to have a valid BC 1 Call Ticket. The hand digging requirement is set out in section 39 of the *Gas Safety Regulation* (Regulation). There is no evidence or suggestion before me that 666 first exposed the gas line by hand-digging.
14. I find 666 clearly owed Fortis a duty of care as a trade working around Fortis gas lines. I find the applicable standard of care was to take reasonable care not to damage Fortis' gas line. As noted, 666 was required to contact BC 1 Call before digging but did not do so. I find the evidence shows 666 failed to comply with its obligations under the Regulation. I find 666 was negligent and its negligence damaged the gas line.
15. I turn then to Fortis' claimed damages. Fortis' July 17, 2021 invoice is for the claimed \$1,714.66: a) \$101.71 for vehicles, b) \$1,312.12 for Fortis labour and fieldwork, and c) \$300.83 for 3rd party contractors.
16. Based on the submitted report and photos, and in the absence of any argument to the contrary, I find the charges reasonable and I allow them. In short, I find 666 must pay Fortis a total of \$1,714.66.
17. Since Fortis expressly waives its entitlement to interest, I make no order for interest under the *Court Order Interest Act*.

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 find it is entitled to reimbursement of \$125 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

19. Within 21 days of this decision, I order 666 to pay Fortis a total of \$1,839.66, broken down as follows:

a. \$1,714.66 in damages, and

b. \$125 in CRT fees.

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

21. 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, Vice Chair