



Civil Resolution Tribunal

Date Issued: September 28, 2022

File: SC-2022-002037

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. MacDonald*, 2022 BCCRT 1068

BETWEEN:

FORTISBC ENERGY INC.

APPLICANT

AND:

CURTIS MACDONALD

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 July 2 or 3, 2021 the respondent, Curtis MacDonald, damaged

a gas line in Prince George, BC. Fortis claims \$2,387.45 for repair costs. Fortis says Mr. MacDonald failed to first identify and expose the gas line and failed to have a valid BC 1 Call ticket as required.

2. Mr. MacDonald says Fortis failed to provide an accurate sketch and failed to adequately mark the gas line with a “tracer line”. Mr. MacDonald says Fortis’ technician Q told him in 2019, after Mr. MacDonald had obtained a BC 1 Call ticket in 2018, that Q could not fully trace the line but that Mr. MacDonald could go ahead and dig in certain areas on the rural property. Mr. MacDonald says in July 2021 he decided to add some fencing by a driveway gate. He hand-dug to about 2 feet without exposing the gas line and then used an excavator. At that point he undisputedly hit the gas line and damaged it. Mr. MacDonald says given the history he is not liable for the gas line damage. He also says Fortis should have determined in 2019 why the gas line was not traceable.
3. Fortis is represented by an employee. Mr. MacDonald 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. The parties refer to repairs in Mr. MacDonald's yard following Fortis' investigations and also to Fortis' planned gas work on Mr. MacDonald's property. I make no findings or orders about those things as they are not before me in this dispute.

ISSUE

9. Must Mr. MacDonald pay Fortis \$2,387.45 for repair services to a damaged gas line?

EVIDENCE AND ANALYSIS

10. 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.
11. Mr. MacDonald bought his 5-acre rural property in April 2018. Sometime later in 2018, he obtained a BC 1 Call ticket to determine where the utilities were located but did no excavation work at that time. In 2019, he planned to build a shop and install a gate and fencing at the beginning of his driveway, near the road. Mr. MacDonald asked Fortis to locate the gas line. Fortis sent their technician, Q, and Mr. MacDonald showed Q the area where Mr. MacDonald planned to excavate. Q tried to locate the gas line but could only identify about 30 feet out from the house

and meter and the main line. None of this is disputed and so I accept this history. More on what Q allegedly told Mr. MacDonald below.

12. In summer 2020, without any problems Mr. MacDonald dug and installed gate posts and chain-link gates at the beginning of the driveway. On July 3, 2021, Mr. MacDonald decided to add fencing “off the edges” of the gate. He marked the post to angle away from the gate/driveway “into the bush line”. He hand-dug just over 2 feet down. The earth was “very hard compact clay” that Mr. MacDonald felt was undisturbed and so he says he felt safe to continue digging to a 4-foot depth with an auger on his excavator. As he inserted the auger to clean out the hole, he “caught” the gas line that was on the hole’s edge. Mr. MacDonald called Fortis. Again, none of this is disputed and I accept it as accurate.
13. I turn next to the applicable law. Without using these words, Fortis essentially alleges Mr. MacDonald was negligent, resulting in the damage to Fortis’ gas service line. To prove liability in negligence, Fortis must show that Mr. MacDonald owed it a duty of care, that Mr. MacDonald breached the standard of care, that Fortis sustained a loss (damages), and that Mr. MacDonald’s breach caused the loss: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
14. I find Mr. MacDonald 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. For the reasons set out below, I find Mr. MacDonald was negligent and his negligence damaged the gas line.
15. Section 39 of the *Gas Safety Regulation* (Regulation) requires hand-digging to expose the gas line, before machinery is used. Section 39 also required Mr. MacDonald to make his request to Fortis at least 2 business days before digging and for him to receive confirmation from Fortis he could proceed, within 10 days before beginning excavation. For clarity, the BC 1 Call ticket fulfills the Regulation requirement.

16. I pause to note Mr. MacDonald says he is an experienced excavator. As such, I find he particularly was or ought to have been aware of the BC 1 Call requirements. I do not accept Mr. MacDonald's apparent assertion that it is impractical for him to have to call BC 1 Call every time he wants to dig around his property. What matters is that the Regulation requires Mr. MacDonald to obtain permission to dig and to first expose the gas line by hand digging.
17. I acknowledge that the evidence shows there was no tracer wire on the gas line that should have been there. This is undisputed and Fortis agreed in its October 22, 2021 email that there were "anomalies with the service line". However, this fact did not relieve Mr. MacDonald of his responsibilities under the Regulation, which, again, were to have a valid BC 1 Call ticket and to have exposed the gas line by hand-digging. Here, Mr. MacDonald's 2018 BC 1 Call ticket was no longer valid in July 2021, as it was over 2 years before he started digging (rather than within 10 days of receiving the ticket). Mr. MacDonald also began using machinery without first exposing the gas line, though I acknowledge this was because he believed there was no gas line in the area.
18. Further, to the extent Mr. MacDonald argues it, I find that Q did not authorize Mr. MacDonald to dig in the particular area where the gas line was damaged in July 2021. Fortis' October 22, 2021 email to Mr. MacDonald says Q told Mr. MacDonald in 2019 that he could dig at the "rear" of his property, which based on the evidence and arguments I find was different from where the gas line was damaged. Further, I find Mr. MacDonald's submission referring to Q's "suggestions" show Mr. MacDonald himself did not believe Q had in 2019 authorized any particular digging. However, nothing ultimately turns on this because, again, in July 2021 Mr. MacDonald did not have a valid BC 1 Call ticket and had not exposed the gas line by hand-digging. I find it was unreasonable and below the standard of care for Mr. MacDonald to proceed with digging by machinery in July 2021, on the basis Q had said in 2019 he thought the gas line ran down the middle of the driveway.

19. In summary, I find Mr. MacDonald was negligent by failing to have a valid BC 1 Call ticket and by failing to expose the gas line by hand digging before using machinery to dig.
20. I turn then to Fortis' claimed damages. Fortis' August 10, 2021 invoice is for the claimed \$2,387.45: a) \$329.55 for vehicles, and b) \$2,057.90 for Fortis labour and fieldwork.
21. Mr. MacDonald argues that Fortis spent some time on July 3, 2021 digging and searching for a tracer wire, which he says should not be his responsibility. Based on Mr. MacDonald's submitted photos, I agree. Further, Fortis submitted no witness statements from its technicians J and S who did the emergency repair on July 3, 2021. The onus is on Fortis to prove that its claimed damages, as set out in its invoice, are related to Mr. MacDonald's damage of the gas line. Fortis argues that the invoice charges are "actual losses to Fortis" but did not provide a breakdown of its invoice separating out the repair labour and the tracer line investigation labour.
22. So, I must determine what portion of Fortis' invoice was to repair the gas line damage and what portion relates to Fortis' attempts to find the tracer wire. First, I allow the \$329.55 vehicles charge, because there is no suggestion that there were any additional vehicles just to deal with locating the tracer line.
23. As for the labour and fieldwork charge, bearing in mind the CRT's mandate that includes speed, efficiency, and proportionality, on a judgment basis I allow \$1,100. This figure takes into account Mr. MacDonald's undisputed description of J and S's repair work and efforts to locate the tracer line by "digging back to the main and trying to locate" the line in Mr. MacDonald's lawn. So, in total I find Mr. MacDonald owes Fortis \$1,429.55 in damages for the repair costs.
24. Since Fortis expressly waives its entitlement to interest, I make no order for interest under the *Court Order Interest Act*.
25. 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 partially successful, I find it is entitled to reimbursement of half the \$125 it paid for CRT fees, which is \$62.50. No dispute-related expenses were claimed.

ORDERS

26. Within 21 days of this decision, I order Mr. MacDonald to pay Fortis a total of \$1,492.05, broken down as follows:

- a. \$1,429.55 in damages, and
- b. \$62.50 in CRT fees.

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

28. 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