



# Civil Resolution Tribunal

Date Issued: October 24, 2022

File: SC-2022-002519

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. Rennie*, 2022 BCCRT 1158

BETWEEN:

FORTISBC ENERGY INC.

**APPLICANT**

AND:

CLINTON RENNIE (Doing Business As BAYON CONTRACTING)

**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 utility company, FortisBC Energy Inc. (Fortis), says that on July 1, 2021 the respondent,

Clinton Rennie (dba Bayon Contracting), damaged a gas line in a BC municipality. Fortis claims \$3,588.65 for repair costs. Fortis says Mr. Rennie failed to first identify and expose the gas line by hand digging before using excavation machinery.

2. Mr. Rennie undisputedly had a valid BC 1 Call ticket. Mr. Rennie says Fortis had incorrectly marked the service line on the maps included with the BC 1 Call ticket and that the damaged gas line was not on the maps at all. Mr. Rennie also says the road base was dense and compact and so it was impractical, it not impossible, to hand dig and says mechanical excavation before hand-digging was permitted. Further, Mr. Rennie disputes the amount claimed, adding that he undisputedly did much of the repair preparation work himself.
3. Fortis is represented by an employee. Mr. Rennie 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. Mr. Rennie argues Fortis is a for-profit private utility company and has failed to provide evidence of its construction standards. Mr. Rennie refers to section 52 of the *Gas Safety Regulation* (Regulation) that says every gas company, including Fortis, must file with the provincial safety manager its standards of construction and any related amendments. I do not know if Fortis has complied with this filing requirement and Fortis has not produced those construction standards as evidence in this dispute. In any event, while I agree with Mr. Rennie that those construction standards may be relevant in some disputes, in the circumstances here and given my decision below I find they are not relevant. So, I find it unnecessary to order their production.

## **ISSUE**

9. Did Mr. Rennie negligently damage Fortis' gas line, and if so, must Mr. Rennie pay Fortis \$3,588.65 for its repair?

## **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. Rennie was hired by a municipality to do some excavation work for a new sidewalk and retaining wall. On July 1, 2021, Mr. Rennie or his crew damaged one of Fortis' gas lines while excavating with machinery (a grader). Fortis claims

\$3,588.65 for its repair costs. None of this is disputed. I note the municipality is not a party to this dispute.

12. Mr. Rennie undisputedly had a valid BC 1 Call ticket at the time of his July 1 excavation, which fulfilled the Regulation's requirement to contact Fortis before digging. Mr. Rennie says Fortis failed to identify at all the damaged gas line on the map Fortis provided. Mr. Rennie also says he could not hand dig to expose the line as it was underneath dense road base.
13. I turn next to the applicable law. Without using these words, Fortis essentially alleges Mr. Rennie was negligent, resulting in the damage to Fortis' gas service line. To prove liability in negligence, Fortis must show that Mr. Rennie owed it a duty of care, that Mr. Rennie breached the standard of care, that Fortis sustained a loss (damages), and that Mr. Rennie's breach caused the loss: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
14. I find Mr. Rennie 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. For the reasons set out below, I find Mr. Rennie was not negligent and so I find he is not responsible for the gas line damage.
15. First, the applicable legislation. Section 39(5) of the Regulation required Fortis, after receiving Mr. Rennie's excavation request, to indicate the gas lines' location in a "manner that is clear and easily understood, by either providing a plan from an ascertainable point on the surface", surface staking, or surface marking. The Regulation further says that marked gas locations must be considered to lie within a "no mechanized zone" that has 1 meter on either side of the indicated gas line.
16. Next, Regulation section 39(7) says the excavator must confirm the "indicated location" by hand digging and must expose the gas installations at a sufficient number of locations to determine their "exact positions and depths" before using mechanized excavation equipment for any purpose other than "breaking the surface cover".

17. Importantly, section 39(1) of the Regulation says a person must not excavate in the “vicinity of a gas installation” that could be damaging or dangerous to a gas line. Section 39(2) says someone intending to excavate must request from the gas company information on the location of all underground gas lines “in the vicinity” of the proposed excavation. Here, Mr. Rennie undisputedly made that request of Fortis by making the BC 1 Call.
18. I find the Regulation clearly does not expect perfection from Fortis in its mapping, marking, or staking. I say this because if it did, the somewhat onerous hand-digging requirement in the Regulation would be unnecessary. Rather, I find the Regulation requires Fortis’ maps or markings to be clear and easily understood but it does not require Fortis to be exact in its identification of a gas line’s location. Similarly, I find the 1-meter non-mechanized zone required under the Regulation is a buffer. Again, this is to account for the fact that the Fortis-provided maps, staking, or marking, are likely not precise. This puts a significant onus on the excavator to take particular care when digging and not rely solely on the maps for a gas line’s location. This conclusion is consistent with the warnings and instructions on the maps Fortis provided and on the BC 1 Call ticket, namely that the excavator must not rely on the maps’ information alone. More on the maps below.
19. However, I further find that the word “vicinity” refers to something reasonably close to the marked or mapped gas line. I find the 1-meter buffer zone on either side of an indicated gas line is a guide as to what falls within the gas line’s “vicinity”. This is significant, as discussed below.
20. Notably, Fortis is inconsistent in its submissions about which pipe was damaged. In the Dispute Notice that started this dispute, Fortis said Mr. Rennie damaged a 60mm pipe. Fortis’ submitted invoice and repair records say the same. Yet, in Fortis’ final reply submission, it says there are both a 42mm and a 60mm pipe identified on what is labelled a “neighbourhood sketch”, which Fortis provided with the BC 1 Call ticket. Fortis further says in its final reply submission that it was the 42mm pipe that Mr. Rennie damaged. Given the inconsistency and the

contemporaneous repair “sketch document” and Fortis’ own invoice, I find Mr. Rennie likely damaged a 60mm pipe.

21. Mr. Rennie says the damaged 60mm pipe was located 0.3m from the face of the retaining wall located on the property line. I find this is consistent with a repair photo Mr. Rennie submitted. Mr. Rennie further says a 15mm pipe Fortis identified on a 1990 service order (a document Fortis also gave Mr. Rennie with the BC 1 Call ticket) was 20-30m away from the specified excavation site. I accept these distances as Fortis does not dispute them and there is also nothing in Fortis’ repair record’s sketch map to suggest otherwise.
22. Significantly, Mr. Rennie says the 60mm pipe that he damaged was not identified **at all** in the 1990 service order. I agree, as only a 15mm pipe was shown. As for the neighbourhood sketch, I find there is a 42mm gas line identified, running down the road parallel to the length of the property address. Based on the maps and the pipe repair photo in evidence, I find this 42mm gas line was further into the road than the 60mm gas line that Mr. Rennie damaged, which was almost at the property line. There is also a 60mm gas line identified on the neighbourhood sketch, but it is much further south and across a street to the east. I accept the latter 60mm pipe was 20-30m away from the excavation site as discussed above. I also find the marked location of the damaged pipe on Fortis’ repair “sketch document” is consistent with this conclusion.
23. Fortis argues that if there was any issue with interpreting the drawings and maps provided, Mr. Rennie should have called Fortis and stopped work. I find there was no obvious interpretation issue because I find the damaged 60mm gas line was not identified in the “vicinity” of the planned excavation. As discussed below, I also find it unproven the 42mm gas line was in the “vicinity”.
24. With that, I find given Regulation section 39(3)(a)(i), Mr. Rennie cannot be held liable in negligence for failing to hand-dig first. To the extent Fortis argues it, I do not accept that Mr. Rennie needed to hand dig first even if there was no gas line identified in the vicinity of the excavation site. I say this because the language in

Regulation section 39(7) says that the “indicated location” of gas lines must be “confirmed” by hand digging. Here, there was no point to digging up by hand a gas line in a vicinity that Mr. Rennie was not going to excavate. Even if he did so, that would not assist in determining if there was a gas line in the vicinity that was being excavated.

25. I am also not prepared to hold Mr. Rennie liable in negligence for damaging the 60mm pipe because the 42mm pipe possibly may have been in the “vicinity” of the proposed excavation. As noted, Fortis has the burden of proof in this dispute. There is no evidence before me that hand-digging to expose the 42mm pipe, even allowing for the 1-meter buffer zone, would likely have exposed the 60mm pipe that I find was damaged.
26. In summary, because Fortis failed to identify the 60mm gas line in the vicinity of the excavation site I find Mr. Rennie was not negligent in his excavation. Given my conclusion above, I find I do not need to address the parties’ arguments about whether Mr. Rennie reasonably broke the dense road cover with machinery as contemplated by Regulation section 39(7).
27. Similarly, I also do not need to address Fortis’ claimed damages in any detail. I will say that had I found Mr. Rennie negligent, I would not have allowed all of the damages claimed. I say this for 2 reasons.
28. First, the evidence undisputedly shows the Fortis repair crew asked Mr. Rennie’s crew to do much of the excavation repair work and Mr. Rennie’s crew did so. I find it would be unreasonable for Fortis to recover repair costs on a time and materials basis for work completed by Mr. Rennie or his crew. I also do not accept Fortis’ unsupported reply submission that it cannot cancel or recall the workers it sent to the repair site. Second, part of Fortis’ invoice was \$141.03 for “other”, which its cost breakdown and submissions indicate was for overtime meals for its crew. I find no legal basis to require Mr. Rennie to pay for Fortis’ crew’s meals, even if Mr. Rennie had been negligent and even if Fortis’ labour contracts with its crew required it to

pay for those meals (which was unproven on the evidence). Given my conclusions above, I dismiss Fortis' claim.

29. 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 unsuccessful, I find it is not entitled to reimbursement of paid CRT fees. Mr. Rennie did not pay CRT fees and no dispute-related expenses are claimed. So, I make no order for fees or expenses.

## **ORDER**

30. I dismiss Fortis' claim and this dispute.

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Shelley Lopez, Vice Chair