



Civil Resolution Tribunal

Date Issued: October 28, 2022

File: SC-2022-002223

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. Humenuik*, 2022 BCCRT 1185

BETWEEN:

FORTISBC ENERGY INC.

APPLICANT

AND:

LAWERANCE HUMENUIK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about payment for gas service line repairs. The applicant, FortisBC Energy Inc. (Fortis), says the respondent, Lawerance Humenuik, damaged an underground gas service line while excavating. Fortis claims \$2,046.18 in repair costs.

2. Mr. Humenuik does not deny damaging the gas line, but says Fortis' improper documentation caused the damage.
3. Fortis is represented by an employee. Mr. Humenuik represents himself.

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). Section 2 of the CRTA 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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. Further, 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.
6. Section 42 of the CRTA says that 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 in this dispute is whether Fortis is entitled to the claimed \$2,046.18 in repair costs.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Fortis must prove its claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision. Apart from the Dispute Response, Mr. Humenuik did not provide any submissions or documentary evidence, despite having the opportunity to do so.
10. It is undisputed that on September 9, 2021, Mr. Humenuik damaged a 15 mm PE gas service line in Peachland, British Columbia. Fortis’ crew attended the site and repaired the damaged pipe. Fortis invoiced Mr. Humenuik \$2,046.18 for repair costs, the amount claimed in this dispute.
11. In his Dispute Response filed at the outset of this proceeding, Mr. Humenuik says Fortis “did not give all or the correct information required for the project”. He says due to Fortis’ “lack of proper protocol”, the gas line was ruptured. However, as noted, Mr. Humenuik did not provide any submissions or documentary evidence.
12. Fortis says the “lack of documentation” Mr. Humenuik is referring to is a cover page from a BC 1 Call request. Fortis says Mr. Humenuik made the request through an online portal and printed off the automatic reply that stated the BC 1 Call was in process. Fortis says the actual BC 1 Call documents that were sent to Mr. Humenuik were never printed. So, Fortis denies any defect in its documentation. As Mr. Humenuik elected not to respond to Fortis’ explanation, I accept it as true. I find Fortis did not provide improper or incomplete documentation to Mr. Humenuik.

13. So, is Mr. Humenuik responsible for the damage? Without using these words, Fortis essentially alleges Mr. Humenuik was negligent, resulting on damage to Fortis' gas service line. To prove liability in negligence, Fortis must show that Mr. Humenuik owed it a duty of care, that he breached the standard of care, that Fortis sustained a loss (damages), and that Mr. Humenuik's breach cause the loss (see: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
14. I find Mr. Humenuik clearly owed Fortis a duty of care as a contractor working around Fortis gas lines. I find the applicable standard of care was to take reasonable care not to damage Fortis' gas line. Fortis says Mr. Humenuik did not hand dig to expose the gas line, as required by section 39 of the *Gas Safety Regulation*. Mr. Humenuik does not deny this. So, I find Mr. Humenuik was negligent in failing to hand dig until he found the gas line.
15. I turn to Fortis' claimed damages.
16. Fortis charged \$2,046.18 in repair costs, made up of \$79.68 for vehicles, \$1,792.34 for labour, and \$174.16 for "other". Fortis did not explain what the "other" charges were for. I find Fortis has not proven it is entitled to payment for the unspecified "other" charges. However, I find the rest of Fortis' invoice is reasonable, and Mr. Humenuik does not dispute that it is. I find Mr. Humenuik must reimburse Fortis \$1,872.02.
17. Since Fortis expressly waives its entitlement to pre-judgment interest, I make no order for it under the *Court Order Interest Act*.
18. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Fortis was successful, I find it is entitled to reimbursement of \$125 in paid tribunal fees. No dispute-related expenses were claimed.

ORDERS

19. Within 21 days of the date of this decision, I order Mr. Humenuik to pay Fortis a total of \$1,997.02, broken down as follows:

a. \$1,872.02 in damages, and

b. \$125 in tribunal fees.

20. Fortis is also 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.

Andrea Ritchie, Vice Chair