



Civil Resolution Tribunal

Date Issued: May 27, 2024

File: SC-2023-011141

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gill v. FortisBC Energy Inc.*, 2024 BCCRT 477

Default decision – non-compliance

BETWEEN:

DALJIT GILL

APPLICANT

AND:

FORTISBC ENERGY INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This final Civil Resolution Tribunal (CRT) decision was made without the participation of the applicant, Daljit Gill, because they failed to comply with the CRT's mandatory directions.

2. The applicant says the respondent, FortisBC Energy Inc., improperly charged them for damage someone else caused to the respondent's gas line. The applicant says they discovered their claim in October 2018. The applicant claims \$1,643.
3. The respondent says it has no record of any incident or loss from October 2018 involving the applicant. It also says that if the alleged loss occurred, the applicant's claim is statute-barred under the *Limitation Act*.
4. The applicant is self-represented. The respondent is represented by an employee.

JURISDICTION AND PROCEDURE

5. The CRT has jurisdiction (meaning "legal authority") over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Where permitted under section 118 of the CRTA, the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
6. CRTA section 36 applies if a party fails to comply with the CRTA, its regulations, the CRT rules about case management, or a CRT order made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to a CRT member for to decide whether to:
 - a. Hear the dispute,
 - b. Dismiss the non-compliant party's claims, or
 - c. Refuse to resolve the non-compliant party's claims.
7. A CRT case manager referred the applicant's non-compliance with the CRT's rules to me for a decision.
8. As explained below, I dismiss the applicant's claim.

ISSUES

9. The issues are:
 - a. Is the applicant non-compliant with the CRTA and the CRT's rules?
 - b. If so, should I dismiss or refuse to resolve this dispute without the applicant's further participation?

EVIDENCE AND ANALYSIS

Non-compliance

10. For the following reasons, I find the applicant is non-compliant in this dispute, having failed to participate in the case management phase, as required by sections 25 and 32 of the CRTA, and CRT rules 1.3(1), 1.9 and 5.1. This is despite multiple attempts by the case manager to contact the applicant with a request for a reply.
11. The applicant applied for dispute resolution on November 1, 2023. The applicant included their mailing address, email address, and telephone number to be used for this dispute.
12. The case manager provided details of the applicant's non-compliance, as follows:
 - a. On April 11, 2024, a CRT case manager called the applicant. A person answered and advised the case manager had the wrong number. The case manager asked if they had dialed the number the applicant provided, and the person confirmed they had.
 - b. In an April 11, 2024 email to the applicant, the case manager explained that parties are required to provide the CRT with correct and up-to-date contact information. The case manager told the applicant to provide a current telephone number and confirm their current mailing address by April 15, 2024. The applicant did not respond.

- c. On April 15, 2024, the case manager emailed the applicant again. They advised that parties are expected to comply with the directions and deadlines the case manager set. The email included a warning that if the applicant did not provide the requested contact information by April 17, 2024, they could be found non-compliant. The email referred to CRTA section 36 and stated that a tribunal member could dismiss or refuse to resolve the applicant's claim without the applicant's participation.
 - d. On April 15, 2024, the case manager also sent a letter by regular mail to the applicant's mailing address setting out the same warning. The letter provided the applicant with a May 2, 2024 deadline to provide the requested information.
 - e. On May 15, 2024, the case manager emailed the applicant a final warning. They advised that if the applicant did not respond by May 17, 2024, the case manager may refer the dispute to a tribunal member without further warning. They stated the tribunal member may dismiss or refuse to resolve the applicant's claim.
 - f. The applicant has not responded to any of the case manager's contact attempts.
13. Based on the above, I find the applicant is non-compliant with the CRTA and the CRT's rules for failing to respond to the case manager's requests for contact and failing to notify the CRT immediately that their contact information for CRT communications had changed.

Should the CRT hear the dispute without the applicant's further participation?

14. I find the case manager used the mailing address, email address, and phone number provided to the CRT by the applicant for use in this dispute. I further find the case manager made a reasonable number of contact attempts, but the applicant failed to respond. Given the case manager's multiple attempts at contact, I find the

applicant likely knew about the case manager's contact attempts, or they should have known because they provided outdated contact information, and they failed to respond or otherwise contact the CRT.

15. Rule 1.4(2) states that if a party is non-compliant, the CRT may:

- a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
- b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
- c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
- d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.

16. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:

- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
- b. The stage in the facilitation process at which the non-compliance occurs,
- c. The nature and extent of the non-compliance,
- d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
- e. The effect of the non-compliance on the CRT's resources and mandate.

17. Based on the evidence described above, I find that the applicant had proper notice of the case manager's attempts to contact them. I further find the applicant knew the

consequences if they failed to respond, which was the potential dismissal of their dispute. I am also satisfied the dispute only affects the named parties, and I see no prejudice to the respondent in dismissing the applicant's dispute.

18. If I were to refuse to resolve the claim, there would be no finality to this dispute. This is because it would be open to the applicant to make a further request for CRT resolution, subject to any limitation period. I find that in refusing to resolve, there would be no finality and no consequence to the applicant for failing to participate, which would be unfair to the respondent.
19. The applicant's non-compliance here also occurred early in the facilitation process, and the parties have not provided any evidence or submissions. The applicant effectively abandoned the process after starting this dispute.
20. The CRT's resources are valuable. I find that it would be wasteful for the CRT to continue applying its resources on a dispute where, through a failure to respond as required, the applicant shows they do not want the CRT's assistance in resolving their claim. While not binding on me, I agree with and apply the former CRT chair's reasoning in *Grand-Clement v. The Owners, Strata Plan KAS 2467*, 2017 BCCRT 45, that forcing an unwilling applicant to pursue a dispute with the CRT would be contrary to the CRT's mandate and would impair the fairness of the process.
21. Weighing all the factors, I find the applicant's claims should be dismissed.
22. Given the applicant's non-compliance, I find they are not entitled to a refund of any CRT fees they may have paid. The successful respondent did not pay any CRT fees or claim any dispute-related expenses.

ORDER

23. I dismiss the applicant's claims and this dispute.

Kristin Gardner, Vice Chair