



Civil Resolution Tribunal

Date Issued: September 27, 2024

File: SC-2022-008430

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. Konkin*, 2024 BCCRT 967

B E T W E E N :

FORTISBC ENERGY INC.

APPLICANT

A N D :

GENTRY KONKIN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about payment to repair a damaged gas line.
2. The applicant, FortisBC Energy Services Inc. (Fortis), says the respondent, Gentry Konkin, damaged Fortis's natural gas lines by excavating negligently and contrary to provincial regulations. Fortis requests an order that Mr. Konkin pay \$2,474.83 for repair work.

3. Mr. Konkin says he is not responsible. He admits that his crew hit the gas line while removing a homeowner's oil tank. However, Mr. Konkin says he contacted the appropriate centre before beginning the excavation, BC 1 Call, but Fortis provided an inaccurate drawing that did not correctly show the gas line location. Mr. Konkin also says he asked for Fortis to attend the site and verify the gas line location, but it did not.
4. Fortis is represented by an employee in this dispute. Mr. Konkin is self-represented.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT's formal written reasons.
6. 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.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

ISSUES

8. The issues in this dispute are:
 - a. Is Mr. Konkin at fault for damaging the gas line?
 - b. If so, must Mr. Konkin pay Fortis \$2,474.83?

EVIDENCE AND ANALYSIS

9. As applicant in this civil dispute, Fortis must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' evidence and submissions, but refer only to what is necessary to explain my decision.
10. Fortis says Mr. Konkin was negligent because he did not follow the Safe Digging Requirements set out in the provided BC 1 Call package and provincial regulations.
11. To prove negligence, Fortis must show Mr. Konkin owed it a duty of care, his conduct did not meet the expected standard of care, his conduct caused the claimed damages and that the damages were reasonably foreseeable (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
12. I find Mr. Konkin owed Fortis a duty of care, as a contractor working around Fortis gas lines. I find the standard of care requires following the regulations and guidelines that Mr. Konkin undisputedly received copies of from BC 1 Call.
13. Mr. Konkin says he was not negligent because he followed all the guidelines, and the provided drawings did not show the correct location of the gas line. Mr. Konkin says he told the BC 1 Call agent that he was concerned about the drawing's accuracy because the house is 50 years old. He says he asked for a Fortis technician to attend the property to verify the gas line location, but his request was denied. Mr. Konkin says the drawing was dated 1982, and did not accurately show the property's current configuration.
14. I find Mr. Konkin has not proved his assertion that the provided drawing was inaccurate. He provided a photo of the yard, which shows the gas meter, but it does not show where the excavation occurred, or where the gas line was located. Mr. Konkin did not provide a witness statement or other evidence confirming that the gas line was not in the location shown on the drawing.
15. Fortis's September 27, 2022 damage report says, "contractor pulled up service with excavator then cut through service with reciprocating saw thinking it was an old

abandoned pipe.” Mr. Konkin does not dispute this account of the incident set out in the damage report, and did not provide contrary evidence. So, I accept it is accurate.

16. Mr. Konkin does dispute the Fortis technician’s report that the gas line breach occurred about 1 meter away from the gas meter. Mr. Konkin says the breach occurred 15 feet away from the meter. He also says the gas line was not buried at the correct depth, and that the meter was incorrectly installed. However, even accepting these assertions are accurate, I find they do not matter. My reasons follow.
17. As noted above, the standard of care required Mr. Konkin to follow the provided guidelines and regulations. Section 39(7) of the *Gas Safety Regulation* (Regulation) under the *Safety Standards Act* instructs a person to hand dig to confirm the gas pipeline’s location before using a machine. Subsection (9) requires the person not to use a machine to excavate, and to advise FortisBC, if the gas line cannot be located by hand digging.
18. These regulations were included in the package that BC 1 Call sent Mr. Konkin before the incident. The hand-digging requirement was also explained in the accompanying guidelines document, both in writing and in a half-page diagram.
19. I find the evidence before me shows that Mr. Konkin and his crew did not follow the Regulation by hand-digging to confirm the pipe’s location. If Mr. Konkin had followed this hand-digging regulation, which is mandatory, it would not have mattered if the drawing was inaccurate, or if the gas meter was incorrectly installed. I also note there is no evidence or submission before me indicating that the gas meter installation had any effect on how or why the gas line was damaged.
20. Finally, Mr. Konkin says Fortis or BC 1 Call denied his request for an in-person site visit to verify the gas line location. Mr. Konkin provided no evidence confirming that request. In any event, I find it does not matter, because if Mr. Konkin had followed

Regulation section 39(7) about hand-digging, the gas line would not have been damaged.

21. In conclusion, I find Mr. Konkin was negligent because he did not follow the Regulation. So, I find he is liable for the gas line repairs. Fortis provided an invoice to support its claim. So, I order Mr. Konkin to pay Fortis \$2,474.83.
22. The *Court Order Interest Act* (COIA) applies to the CRT. I find Fortis is entitled to pre-judgment interest from November 8, 2022 (the invoice date). This equals \$216.63.
23. As Fortis was successful in this dispute, under CRTA section 49 and the CRT's rules I find it is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

ORDERS

24. I order that within 30 days of this decision, Mr. Konkin must pay Fortis a total of \$2,816.46, broken down as follows:
 - a. \$2,474.83 in damages,
 - b. \$216.63 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
25. Fortis is entitled to post-judgment interest under the COIA, as applicable.
26. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

Kate Campbell, Vice Chair

