



# Civil Resolution Tribunal

Original Date Issued: November 7, 2022

Amended Date Issued November 29, 2022

File: SC-2022-002809

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Iliescu v. Orange Bridge Realty Ltd. (dba Royal LePage Parksville-  
Qualicum Beach Realty)*, 2022 BCCRT 1216

B E T W E E N :

VICTOR ILIESCU

**APPLICANT**

A N D :

ORANGE BRIDGE REALTY LTD. DBA ROYAL LEPAGE  
PARKSVILLE-QUALICUM BEACH REALTY

**RESPONDENT**

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## **AMENDED REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

### **INTRODUCTION**

1. Victor Iliescu co-owns a home in Parksville, BC. He hired Orange Bridge Realty Ltd. (Orange Bridge), which does business as Royal LePage Parksville-Qualicum Beach

Realty, as a property manager. Mr. Iliescu alleges that Orange Bridge breached their contract, mostly by failing to properly inspect and maintain the property. His alleged damages for these various breaches exceeds \$5,000, but he has limited his claim to \$5,000 because that is the Civil Resolution Tribunal's (CRT) small claims monetary limit. He is self-represented.

2. Orange Bridge denies breaching the parties' contract. It also relies on an indemnity clause in the parties' contract. Orange Bridge asks me to dismiss Mr. Iliescu's claims. It is represented by an employee.

## **JURISDICTION AND PROCEDURE**

3. These are the CRT's formal written reasons. 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 the dispute's parties that will likely continue after the CRT process has ended.
4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
5. Section 42 of the CRTA 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.

6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
7. There were 6 pieces of evidence that Mr. Iliescu uploaded to the CRT's online portal that I was unable to open. At my request, CRT staff asked Mr. Iliescu to provide copies via email, which he did. CRT staff gave Orange Bridge an opportunity to comment on the evidence. Orange Bridge said it had nothing to add, so I have considered the evidence in my decision.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did Orange Bridge breach the parties' contract?
  - b. Is Mr. Iliescu's claim about the property's west fence out of time under the *Limitation Act*?
  - c. Does the indemnity clause protect Orange Bridge from any of Mr. Iliescu's claims?
  - d. What, if anything, are Mr. Iliescu's damages?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Mr. Iliescu as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The following background facts are undisputed. Orange Bridge was Mr. Iliescu's property manager starting from 2008 until October 2021, when he moved back into

the property as his primary residence. The same tenants lived in the house from March 2012 to October 2021.

11. The parties signed the contract at issue on December 19, 2018. The agreement required Orange Bridge to do monthly “drive by” inspections to “ensure the grounds are maintained”. The agreement also required “periodic interior inspections” and “periodic maintenance”. The agreement allowed Orange Bridge to “arrange for any repairs” up to \$500 without express permission from Mr. Iliescu. It also included an indemnity clause, which I address below.
12. Mr. Iliescu says that Orange Bridge breached the parties’ contract by failing to properly inspect and maintain the property as the contract explicitly required, and more generally by providing negligent services. All contracts for professional services (like property management) include an implied term that the professional will perform their duties to a reasonably competent standard.
13. Generally, when a person alleges that a professional’s conduct fell below a reasonable standard, they must provide expert evidence about the standard of care within that industry. This is because the standard expected of a property manager is outside the common knowledge of an ordinary person. There are 2 exceptions to this general rule. First, there is no need for expert evidence when the alleged breach relates to something non-technical. Second, there is no need for expert evidence when the conduct is obviously below a reasonable standard. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112. Mr. Iliescu did not provide any expert evidence.
14. With that background in mind, I will address Mr. Iliescu’s individual allegations, which are as follows:
  - a. Orange Bridge failed to properly manage a blackberry bramble along the east property line.
  - b. Orange Bridge failed to do periodic inspections and maintenance to prevent property damage.

- c. Orange Bridge allowed the tenants to rent a room to an international student, contrary to their lease.
- d. Orange Bridge rebuilt the property's west fence beside the property line, shrinking the useable size of Mr. Iliescu's property.
- e. Orange Bridge unnecessarily replaced a shower base.

### ***East Fence and Blackberry Bramble***

15. Mr. Iliescu says that when he moved back in October 2021 there was an overgrown blackberry bramble along the east fence in the backyard. He removed it. It is undisputed that Orange Bridge paid a contractor to remove the blackberry bramble in March 2018. The blackberry grew back, as blackberry notoriously does.
16. As mentioned above, the contract required Orange Bridge to do monthly "drive by" inspections to make sure the grounds were well maintained. Mr. Iliescu says that Orange Bridge failed to remove the blackberry before it got out of control again, which in turn caused the east fence to rot by blocking sunlight.
17. I find that Mr. Iliescu has not proven this claim. First, there is no evidence that the blackberry bramble and adjacent fence are visible from the street. I find that the term "drive by" means that Orange Bridge only had to do a visible inspection from the street. Second, Mr. Iliescu has not provided any expert evidence to prove that the blackberry bramble was so overgrown that a reasonable property manager would have had it removed before October 2021, even if it was visible. There are no photos of the blackberry from before Mr. Iliescu cut it all down. I also find that the photos in evidence do not prove that the fence is rotten and needs to be replaced, although it appears damp. Even if it is rotten, there is no expert evidence that the blackberry bushes caused the rot. I dismiss this claim.

### ***Other Property Damage***

18. Mr. Iliescu says that when he moved back into the property, it was in very poor condition. He says there was mould in the upstairs bathroom and damage to a floor and a wall.
19. Mr. Iliescu says that Orange Bridge should have discovered the mould sooner during its mandatory periodic inspections. He says that the mould could have spread. The problem with this claim is that Mr. Iliescu provided no evidence about what effect, if any, the alleged delay had on the mould problem. Under the parties' contract, Mr. Iliescu would have had to pay for any mould remediation during the tenancy. I find that to prove a loss, he would need to prove that discovering the mould sooner would have reduced the cost to repair it. I find that he has not done proven this.
20. As for the wall and floor, Mr. Iliescu provided photos of the damage, which I find is relatively minor. In any event, Mr. Iliescu does not explain what Orange Bridge could reasonably have done to prevent this damage through inspections. Again, the cost of repairing damage to the home was Mr. Iliescu's responsibility under the contract, so I find he would have needed to pay for these repairs in any event.
21. I dismiss Mr. Iliescu's claim about property damage.

### ***International Student***

22. Mr. Iliescu alleges that Orange Bridge breached the contract by allowing the tenants to rent a room to an international student.
23. The difficulty here, as Orange Bridge points out, is that Mr. Iliescu has not proven any loss because there was an international student. He provided some email correspondence with his insurance broker from 2018 that his current insurer would not insure the property if there were more than 2 unrelated tenants or students sharing the house. However, there is no evidence that Mr. Iliescu paid higher insurance premiums or that its insurer denied a claim because the student lived there. He alleges that the student caused a flood but provides no details or explanation

about how the student did this. He also provided no evidence about any losses from the flood. For this reason, I dismiss this claim.

### ***West Fence***

24. In April and May 2016, Orange Bridge hired a fencing contractor to rebuild the fence along the property's west boundary using new posts. The fence was on a retaining wall. The fencing contractor rebuilt the new fence beside the retaining wall. Orange Bridge says the new fence is about a foot inside the retaining wall. Mr. Iliescu says it is "many feet". Based on the photos in evidence, I find it was around 2 or 3 feet.
25. VD provided a signed statement for this dispute. According to VD, the fencing contractor warned that it would be expensive to rebuild the fence on the retaining wall and suggested moving it. VD says they phoned Mr. Iliescu after the project was complete that they had needed to move the fence, and Mr. Iliescu took no issue with it. Crucially, VD does not say that they asked Mr. Iliescu in advance. VD does not explain why they did not do so. The fence project cost over \$2,500.
26. I find that Orange Bridge breached the parties' contract by moving the fence without Mr. Iliescu's approval. I find that the requirement for approval of large repairs required Orange Bridge to give Mr. Iliescu the relevant details to make an informed decision. I find that it is obvious that a decision to move the fence off the property line is a significant detail that Orange Bridge should have cleared with Mr. Iliescu in advance. I find that Orange Bridge's conduct fell below the standard of a reasonably competent property manager.
27. The next question is whether the parties' contract protects Orange Bridge from compensation for this breach. Orange Bridge relies on an indemnity clause, which I will reproduce in full, using the party names for readability:

Mr. Iliescu indemnifies and holds harmless Orange Bridge in respect of all claims for property loss or damage, or bodily injury, in connection with the property that is under its management. Orange Bridge is not to be held responsible for the cost of any repairs to the rental property.

28. An indemnity clause will not cover a party's own negligence unless negligence is either explicitly mentioned, or the language is broad enough to cover negligence and there is no other legal claim it could cover. *Kocherkewych v. Greyhound Canada Transportation Corp. et al*, 2006 BCSC 534.
29. Here, I find that the indemnity clause is broad enough to potentially cover Orange Bridge's own negligence. But, I find that it could also cover other legal claims. For example, I find that it could cover legal proceedings by a tenant or visitor for injuries suffered while at the property. I also find it unlikely that the parties intended this clause to protect Orange Bridge from claims by its own clients about the quality of its services. I find that the indemnity clause has no application to Mr. Iliescu's claim about the fence.
30. I note here that I sought the parties' additional submissions about whether Mr. Iliescu filed his claim in time under the *Limitation Act*, which creates a 2-year limitation period for most claims. Having reviewed the parties' additional submissions, I find that he did. I accept Mr. Iliescu's evidence that he first discovered the fence's location in October 2021 when he moved back. I do not accept VD's evidence that she told him about it at the time, because they made their statement almost 6 years after the fact. In contrast, I find that Mr. Iliescu would likely have remembered if VD had told him the fence had been moved.
31. I turn then to Mr. Iliescu's damages. He provided an email quote to move the west fence for \$1,275 including labour, materials, and taxes. The quote is brief and there is no evidence of the person's qualifications, but I find that the amount is reasonable. Mr. Iliescu also claims the cost of a survey. There is no evidence that the retaining wall is not on the property line. There is no evidence that the neighbour objects to putting it back there. I find that Mr. Iliescu has not proven that a survey is necessary, so I dismiss this aspect of his claim.



## ***Shower Repair***

32. On May 19, 2021, the property manager responsible for Mr. Iliescu's house, VD, emailed Mr. Iliescu that a shower base had cracked and was leaking water. VD told Mr. Iliescu it would need to be replaced. On June 10, 2021, VD emailed Mr. Iliescu a \$2,231.25 quote, which Mr. Iliescu approved. However, according to the final invoice, the work ended up costing \$3,176.25 because the contractor needed to tile the shower walls and cut a new door.<sup>i</sup>
33. Mr. Iliescu says that Orange Bridge has never proven that the shower base needed to be replaced. He suggests that Orange Bridge acted dishonestly. Ultimately, I find Mr. Iliescu's claim about the shower base speculative. He says that other plumbers told him that shower bases should last longer and should be under warranty. However, he did not provide any direct evidence from these plumbers or any evidence of a warranty. I find that this hearsay expert evidence is unreliable, and I put no weight on it. Most importantly, Mr. Iliescu also does not explain why Orange Bridge would lie about the need for a new shower base, when it gained nothing by hiring a contractor to replace it.
34. Mr. Iliescu also points out that the final cost was considerably more than the quote he approved. He says he was never informed of the increase, which Orange Bridge does not dispute. VD says nothing about the price increase in their statement. Orange Bridge does not say when it found out that additional work was necessary. Given that the revised cost was more than \$500 more than the initial quote, and absent any evidence that Orange Bridge itself was unaware of the price increase in advance, I find that the contract required Orange Bridge to get Mr. Iliescu's approval for the additional work. I also find that the indemnity clause does not protect Orange Bridge from its own failure to adhere to the contract. I find that Orange Bridge must reimburse Mr. Iliescu \$945 for the unapproved work on the shower base.
35. In summary, I order Orange Bridge to pay Mr. Iliescu \$2,220. I dismiss his remaining claims.

36. The *Court Order Interest Act* (COIA) applies to the CRT. However, Mr. Iliescu did not claim interest, so I award none.
37. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Iliescu was partially successful, so I order Orange Bridge to reimburse half of his \$175 in CRT fees, which is \$87.50. He does not claim any dispute-related expenses. Orange Bridge did not claim any dispute-related expenses or pay any CRT fees.

## **ORDERS**

38. Within 30 days of the date of this order, I order Orange Bridge to pay Mr. Iliescu a total of \$2,307.50, broken down as follows:
- a. \$2,220 in damages, and
  - b. \$87.50 in CRT fees.
39. I dismiss Mr. Iliescu's remaining claims.
40. Mr. Iliescu is entitled to post-judgment interest, as applicable.

41. 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.

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Eric Regehr, Tribunal Member

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<sup>i</sup> Amended under sections 51(a) and 64(a) of the CRTA to correct a typo and clarify my initial decision. I inadvertently failed to delete a partial sentence at the end of this paragraph, which was about a matter I later address in paragraph 34. I have deleted that partial sentence in this amended decision.