



Orchard House, a leasehold building at 647 Michigan St. in James Bay. DARREN STONE, TIMES COLONIST

# Legal imbroglio over windows and doors divides James Bay leaseholders facing \$1M in fees

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A group of James Bay leaseholders is on the hook for almost \$1 million in legal fees after one resident unsuccessfully sued the property owner over the cost of new windows and patio doors.

It's part of a years-long legal saga that has pitted residents of Orchard House, a leasehold building on Michigan Street, against one another, and against Westsea Construction, and pushed many to cut their losses and sell.

The case dates back to 2014, when Hugh Trenchard filed a court petition, hoping the B.C. Supreme Court would force Westsea Construction to disclose details about mounting repair and maintenance bills. Westsea's lawyers did agree to provide those figures to Trenchard.

Trenchard, who has a two-bedroom unit,

received a \$37,000 bill in 2013 to cover the cost of replacing the building's windows and sliding glass doors, which at the time was projected to cost \$3 million, but ended up costing owners almost \$6 million.

Owners of a studio faced a bill of about \$20,000 and owners of a one-bedroom were expected to pay \$27,000, costs that concerned Trenchard. In a leasehold property, owners own the home or condominium on the land but rent or lease the land itself, often in a 99-year lease.

Trenchard, a 51-year-old B.C. government employee, then filed a second lawsuit arguing that the repairs undertaken by Westsea Construction were not required under the lease, and thus the costs shouldn't be borne by Orchard House residents.

A B.C. Court of Appeal decision released May 28 upheld a lower court's decision that the cost of replacing failing windows, sliding doors and exhaust fans must be borne

by the leaseholders, because they are legitimate repairs under the lease provision.

Westsea Construction is charging the nearly \$1 million in litigation fees to leaseholders. Trenchard said that amounts to just over \$5,000 for him, but would be less for leaseholders in smaller units.

A January 2018 letter from Mark Stacey, the lawyer representing Westsea, told Orchard House leaseholders: "The legal charges Westsea has incurred in 2017 will be charged as actual operating expenses. If any leaseholder fails to pay their share of operating expenses, we have been instructed to initiate legal proceedings against any defaulting leaseholder, which may include applying to the Supreme Court of British Columbia for an order terminating the lease of your suite, or in the alternative, a court-ordered sale of your leasehold interest."

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# Legal twists and turns, and discord

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In 2018, Westsea billed leaseholders a "shortfall" bill for \$551,954. Of that amount, \$426,337 was Westsea's 2017 legal expenses. In 2019, leaseholders were billed \$453,771 for the previous year's operating "shortfall."

The Vancouver-based property owner is now suing any leaseholders who have refused to pay the litigation costs.

Westsea Construction declined to comment for this story.

The company's lawyer, Mark Stacey of the law firm Singleton Urquhart Reynold Vogel, did not respond to a request for comment.

Trenchard estimates about 20 leaseholders have refused to pay. "I have always been of the position that [other leaseholders] should not be on the hook for litigation that I have personally been involved in," said Trenchard.

He said he was prepared to personally bear the costs, even if that meant bankruptcy.

Gerald Rotering, one of the leaseholders fighting the legal fees, said he loves his 450-square-foot studio with views of the ocean and Beacon Hill Park, but hates the way the legal battle has

divided neighbours.

Rotering said since he bought the lease to his suite in 2008, his special assessment costs for windows and sliding doors have added up to about \$40,000. The legal fees will be thousands of dollars on top of that, he said.

"To be told by your landlord that your neighbour has a dispute and you're going to pay the landlord's expenses to dispute it, without limit ... without limit we must pay the bill. We found it preposterous."

Rotering has chronicled the legal twists and turns through a website at orchardhouseleaseholder.ca.

Rotering said the 38 per cent hike in annual operating costs for 2018 and a further 25 per cent in 2019 has forced some people to sell their units at a loss.

"I would say at least a dozen have lost their home for financial reasons," he said.

Rotering is urging the Ministry of Municipal Affairs and Housing to craft specific legislation to protect leaseholders.

In a 2018 letter to B.C.'s Rental Housing Task Force, Rotering, writing on behalf of 35 Orchard House residents, urged the government to make it illegal for property owners to charge legal expenses to leaseholders. It also

wants the government to cap the rate of annual increases for operating expenses and to require property owners to give one year's notice of any major capital projects.

The letter said disputes between leaseholders and property owners should be settled through the civil resolution tribunal instead of through the courts.

Minister of Municipal Affairs and Housing Selena Robinson was not available for an interview, but her ministry said in a statement that it is aware of the issues long-term leaseholders face.

"Long-term residential leasehold arrangements are made under private contracts with the building owners and because of this status are not governed by the Strata Property Act or the Residential Tenancy Act," the ministry said.

There are only about 20 leasehold buildings in B.C. and most of the leasehold agreements were created in the early 1970s, the ministry said. Most of the buildings were constructed prior to B.C.'s strata legislation or were rental buildings converted to leasehold that chose not to become stratas.

The ministry said it's not aware of any buildings under

leasehold agreements built in recent decades.

It said the province has taken steps to increase consumer protection for purchasers of leasehold units, such as requiring developers to obtain a signed disclosure statement from prospective purchasers. "Real estate agents are also required to be more knowledgeable about leasehold agreements in order to obtain licensing."

Disputes between building owners and leaseholders must be dealt with through the courts, the ministry said, but it encourages representatives of leasehold building owners to increase transparency and communication with leaseholders.

If Westsea wins the lawsuit over legal fees, it will have a chilling effect on leaseholders, who will be reluctant to challenge any future operating costs because they could be on the hook for legal fees, said Trenchard.

Trenchard said while he has no regrets about filing the lawsuit, he is considering selling his unit.

"The divisiveness among the leaseholders has worn on me," he said. "I'm sure there are some who hate me ... because they're being charged for the cost of my litigation that they had nothing to do with."

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