

News release from some lessees,  
Orchard House tower, James Bay, Victoria  
10 June 2019

Issuer:

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Trial dates:

The three weeks of June 3-7, 10-14 and 17-21 were allocated, but it appears that the civil trial will end on June 17. A ruling could take weeks or even months.

A legal challenge to billing tenants for replacement windows and balcony doors in a Victoria apartment tower is in the second week of a B.C. Supreme Court civil trial at the Victoria courthouse. A second legal dispute has arisen because the building owner, Westsea Construction, has billed all tenants the cost of its legal team to oppose the first action and has sued to evict those who refused to pay. Those legal expenses now exceed \$1 million.

Orchard House tower at 647 Michigan Street in James Bay saw the second phase of comprehensive windows and doors replacement completed in 2017 and the \$5.73 million cost billed to those who lease the suites for 99 years from Westsea Construction. The building has been controversial since 1974, when its owner converted the rental building to long-term leaseholds just before the then-NDP provincial government could prohibit the practice.

While Westsea construction considers replacement windows and doors an operating cost, many long-term lessees say they are tenants who should not pay to replace worn-out windows. Lessee Hugh Trenchard, billed \$37,000 as his suite's share of the project's second phase, filed claim that the cost cannot be charged to him under the Orchard House lease. A dozen other lessees filed small-claims court actions that have been put on hold pending the decision on Trenchard's action.

Westsea billed lessees \$551,954 for its 2017 legal expenses and another \$453,771 for 2018, as well as raising suite fees 38% for 2018 and another 25% for 2019 to cover the Orchard House increased operating costs and the company's legal expenses. The lump-sum billings for windows replacements and the company's past-year legal costs on top of higher monthly suite fees have forced numerous residents to sell—or try to sell--their leases. Others are barely managing to keep up financially while those sued by Westsea for refusing its 2017 legal-expenses billing are also carrying the cost of their own lawyer in that matter.

Victoria has five long-term lease buildings, all of them within the Victoria-Beacon Hill riding of NDP MLA and Deputy Premier Carole James. Vancouver's West End has eight such buildings, several also owned by Westsea Construction, and Westsea owns a large complex of 99-year-lease townhouses and apartments in Richmond. Lessees at various of all these buildings have petitioned the Province for legislated protection, as long-term leases are not governed by B.C.'s Residential Tenancies Act. The Ministry of Housing has staff considering the issues and legislative options.

Acting as a self-represented litigant, Orchard House lessee Hugh Trenchard last week faced Westsea's two-man Vancouver-based legal team, mountains of paper and a successful challenge to his use of some evidence, such as other identical 99-year leases. Trenchard argues, in part, the legal principle that when a standard-form contract or lease is ambiguous it should be interpreted in favour of the party that had no part in drafting it.

Westsea argues that there is no ambiguity in the lease. A list of operating expenses includes items as minor as window washing without mentioning window replacement. The lease makes no mention whatsoever of the words “capital cost” or “capital expense”. The lease assigns maintenance of all windows and other suite interior components to the lessees/tenants with a standard rental-contract “wear and tear” exception clause. Supreme Court Justice Karen Douglas of Vancouver will decide which side is right, and on what basis, in a ruling that could take weeks or months to prepare.

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