

Rental Housing Task Force Submission

Introduction

We thank you for this opportunity to provide government with our concerns and recommendations for improving housing security for B.C. residents.

It is important for the Task Force to know that there are many types of multi-suite leasehold buildings in British Columbia. There are strata and non-strata leaseholds on private, public and indigenous lands. This submission addresses the non-strata leasehold building on private lands.

Lancaster Gate Tenants Committee represents the 84 leaseholders of Lancaster Gate Apartments in Vancouver. About half the leasehold owners' suites are occupied by renters. Our building is one of several dozen prepaid non-strata long-term leasehold buildings operated under contracts in British Columbia's private domain. Vancouver alone has eight non-strata leasehold buildings encompassing nearly a thousand suites.

As non-strata leaseholders, we are basically prepaid renters. But unlike other renters, we have to carry the costs of building maintenance, upgrades on common property, taxes, garbage pickup, heat and water, grounds, etc. through monthly fees, often on top of mortgage payments. We carry those costs but have little or no say in how our money is spent or how much the lessor can demand to cover ordinary costs or extraordinary assessments.

And unlike other renters in BC, we have no rights or protections under provincial government housing laws. In BC's present predatory housing market, leaseholds are becoming easy prey for foreign investors looking to redevelop these properties. Without any government legislation to protect us, leaseholders are at the mercy of the market.

The Residential Tenancy Act, Strata Property Act and the Civil Resolution Tribunal Act all exclude our form of housing from their umbrellas of protection. As leaseholders, any rights we do have come from the lessor and are summarized in a one-sided, 99-year contract we inherit from the previous owner when we purchase a suite in a leasehold building. **There is no legislation to cover non-strata leaseholds in the private domain.**

Our only recourse for dispute resolution is the courts. Since the majority of leaseholders are retired, seniors or people with limited resources, who are trying to get a foothold (however precarious) on the property ladder in B.C., pursuing court cases are beyond the financial means of most leaseholders. Not to mention time-consuming for the litigants and the already backed-up courts.

Background

In the early 1970s, Lancaster Gate Apartments was converted from a rental apartment building to a long-term leasehold building. At that time the rental housing stock was extremely low and rents were rising fast because of this shortage. The response to this crisis by the government of the day was to bring in rent controls. Though a sound policy, it had unintended consequences.

Before the legislation could be enacted, some savvy developers used a legal loophole to turn rental buildings into leaseholds. The developers pressured the renters to purchase the suites in a leasehold agreement that was non-negotiable or else the renter would be evicted. Of the leasehold contracts then created, all the rights rested with the lessor. And they still do to this today. The history of the creation of non-strata leaseholds is contained in Hansard records throughout the early 1970's.

The most damaging outcome of this continuing lack of rights is financial. Leaseholders pay for all repairs and updates to our individual suites, some of which are ordered by lessors. But, as we already pointed out, we also pay for all repairs and updates to the lessor's buildings, all of which are determined by lessors, with no input from us and no written financial justification provided or required by our contract in the majority of leaseholds.

Since the 1970's, successive governments have incrementally decreased the length of leasehold terms covered under the Residential Tenancy Act. Today, leases with terms greater than 20 years are not included in the Act, leaving non-strata private sector leaseholders without an accessible and affordable government regulated dispute resolution process or housing rights.

Current Issues

1. One-sided contracts

The leasehold contracts we have researched provide very few, if any rights to lessees. While contracts vary from property to property, building owners/lessors have the sole right to determine fees, set rules, conduct extensive repairs or any other costly projects without providing justification for the necessity of such expenditures or obtaining leaseholders' agreement.

Leasehold contracts provide no requirements for financial disclosure or justification of costs. On top of buying long-term leases at great cost, leaseholders are required to pay monthly maintenance fees that are increased at the sole discretion of the lessors. In some buildings, those fees have been raised by over 100%, without justifiable repairs or updates.

2. Neglect and mismanagement

In one non-strata leasehold building, necessary elevator repairs were left undone for several weeks on multiple occasions despite city by-laws requiring a working elevator and elderly or disabled residents being unable to use the stairs. In fact, within the last week, that same West End Vancouver leasehold building's elevator was out-of-service again (after operating for just one day). Disabled residents who could not use the stairs were told they should call the Fire Department to carry them down the stairs if they needed to leave the building! In other buildings, necessary repairs have been left undone for months. Attempts to even contact owners or managers to deal with the situation often prove unsuccessful. One building's only communication with the offshore owner is in the form of terse, scribbled notes taped to the inside of the elevator (see example below) or on the wall of the lobby. No contact information is ever given.



There are many other instances of mismanagement or neglect in non-strata leasehold buildings. In some cases, charges to leaseholders far exceed the real costs of forced upgrades. In one situation, leaseholders' property tax rebates are being withheld. In another building, leaseholders are being pressured to sell their suites, which are then being bought by the building owner's company, likely in order to create potential for future rezoning applications and building redevelopment. The government of the City of Vancouver actually seems to be helping to speed up this process before they are kicked out of office in the upcoming municipal elections:

<https://vancouver.sun.com/opinion/op-ed/elizabeth-murphy-outgoing-vision-council-doing-chainsaw-massacre-to-city-zoning-without-public-consent>.

One leasehold building in the West End that is located in an extremely desirable location close to the beach was bought by a foreign buyer who is directing changes from abroad through a local manager in an effort to force leasehold owners out of their building by doubling maintenance fees despite not doing necessary maintenance and repairs.

3. Pressure to sell

When non-strata leaseholders are pushed out of their suites, they have very few options. They cannot just move out and start again without selling their suites. That sounds like a simple solution, but often-exorbitant monthly maintenance fees severely harm the sale/resale of leaseholds. That is especially true when buyers require mortgages and then find out that the lessor has the sole discretion and final say for increasing maintenance fees and imposing special assessments. Many leaseholders have few liquid assets to start life anew without having access to the funds they invested in their leasehold homes and are left to the mercy of the BC housing market. And as we know, the market has no mercy.

We can expect more of this as the original developers transfer ownership. The original developers of non-strata leaseholds received the value for their assets when the renters purchased their suites in the 1970's. It is hard to see how a new owner purchasing a non-strata leasehold building can profit from the building without finding ways of dramatically raising fees or redeveloping the whole property. We know that is already occurring. The business model of private domain non-strata leasehold is definitely not sustainable when building ownership is transferred to a new owner. Leaseholders outside the private domain do not have to worry about ownership being transferred.

4. Lack of financial transparency

Another serious concern for us is that lessors are often unwilling to provide building insurance and other financial information to lessees. As a result, insurance companies are not always willing to provide those lessees with the required tenant insurance. Without financial disclosure, leaseholders cannot be assured that their equity assets will be fully covered in the event of severe damage to the building or that sufficient funds are available for upcoming repair and maintenance needs. For most non-strata leaseholds in the private domain, there is no guarantee of receiving insurance if the building is unlivable because of some catastrophic structural disaster.

5. Lack of legislated protections

We long-term non-strata leaseholders find ourselves in a similar position to that of the manufactured home owners prior to the 1990's. Until then, they had no protections under the law for their pad tenancies. Today they have protections under the Manufactured Home Park Tenancy Act, as tenants have under the Residential Tenancy Act and condo owners have under the Strata Property Act. In addition to their legislative protection, all three of these tax-paying BC groups, have access to BC government dispute resolution processes for resolving issues.

Even though we are also BC taxpayers, subject to the same laws and entitled to the same rights, long-term non-strata leasehold owners in the private domain have no such legislated protections. We only have the very expensive courts to rely on when there is a dispute, a no-win scenario for leaseholders, who could end up with court costs on top of the costs for unfair assessments or repairs. We can find no decision in law or any legal language that would allow non-strata leaseholds in the private domain, to use the existing residential arbitration tribunals. We want that to change.

Status of Leasehold Contracts

When we bring up the fact that non-strata leaseholders have no legislative protections, successive elected representatives have arrogantly dismissed us by saying we have “commercial contracts”. Our contract is NOT a commercial contract. A commercial contract is a business contract, based on profit and loss stemming from commercial transactions. Despite claims that we have ‘commercial

contracts,' ironically, our leasehold contracts disallow any business from being conducted from the leasehold building!

A so-called 'commercial' contract where only one party to the contract has rights and the other party has next to none, begs for legislative intervention to level the playing field. These leasehold contracts were never negotiated. Ever. A renter signing a rental lease with a landlord can sometimes be granted a little legal wiggle room. As a non-strata leaseholder purchasing a home, that possibility is not afforded to you. If you want an affordable home with the tiny modicum of security of tenure that leaseholds offer, you must sign the contract-lease with absolutely no changes. Consumer protection legislation is not even granted to the lessee. That is why prompt legislative intervention is urgently required to deal with these leasehold contracts that leave vulnerable residents of leaseholds unprotected in Vancouver's cutthroat housing market.

A leasehold contract is a housing contract. It is a hybrid between a rental lease and a strata. We are just tenants who pay our rent in advance. We pay the BC home-purchase tax and are eligible for the home owners' tax rebate. But we have no legislative rights. We do have the right to live in our leasehold suites until the lease expires, all the while paying all expenses including operating and capital costs.

It is our understanding that 99-year leases mostly exist in the housing sector of the economy, and in no other sector or form of contract. That is because no contract can be expected to maintain continued equity for both parties for 99 years. Leasehold housing contracts were one-sided from the beginning. As a result, in 2018, non-strata leaseholders are still being held hostage to unfair decisions arbitrarily made in the 1970's without any government oversight or legislation.

Differences between Leasehold Contracts

While private leaseholds are spread throughout the lower mainland and Vancouver Island, there are eight non-strata leasehold buildings in the West End of Vancouver. Seven of the buildings have exactly the same leasehold contracts despite all having different owners. A copy of the contract and the buildings it covers is available at: <http://www.eblagroup.ca/the-lease.html>.

The Lancaster Gate leasehold contract has some important differences from the above-mentioned contracts. It contains a number of rights not included in the other seven contracts, but which are sought by other non-strata leaseholders. The Lancaster Gate contract can be viewed at:

<https://www.dropbox.com/s/q448f8zhm8a0vqv/Lancaster%20Lease.pdf?dl=0>.

We are living proof that non-strata leaseholders can have rights and the world does not end for the owners of leasehold buildings. Our Lancaster Gate contract provides for the election of a ‘Tenants Committee’ and defines the committee’s jurisdiction, as well as having a building appeal procedure when potential renters are not approved by the lessor. It contains a formula to calculate the amount each leaseholder would receive monetarily if the building were catastrophically destroyed and it requires formal agreement of 3/4 of the leaseholders for proposed capital expenditures. In addition, the leaseholders can obtain copies of the building insurance, budgets and expenditures.

But all of this can change, as it has in other leasehold buildings, if the building is sold and ownership changes. Such cases have resulted in leaseholders being forced to resort to litigation. Litigation is a no-win situation for leaseholders due to the extreme financial and personal stress it creates, not to mention the anxiety over the potential outcomes such as bankruptcy and homelessness. This also happens when a building lessor/owner is determined to extract more funds from the leaseholders to increase the value of their investment, as would happen to a renter if a rental landlord were free of any legislative restrictions. Fortunately for BC renters, with the exception of non-strata leasehold “renters”, that is not the case. The following website describes one such on-going situation: <https://orchardhouseleaseholder.ca/>

For over 45 years BC governments have shamefully ignored leaseholders in the private domain. Renters, strata owners, realtors, developers and many others in the housing industry have legislated rights and responsibilities, but private domain non-strata leaseholders are left out. We are the orphans of the housing industry. And it is not fair.

Recommendations

To protect leaseholders from exploitation by building owners and to improve housing security, we offer the following recommendations:

1. Dispute resolution process

Include private domain, non-strata long-term leaseholds in current or new legislation that provides an affordable, accessible, government regulated dispute resolution process. Match the maximum award to that of small claims court.

2. Standard Practices and Procedures

Develop Standard Practices and Procedures for each of the following:

- a. End of lease – develop a procedure that ensures reasonable options for lessees to keep their homes
- b. Contingency Fund – develop standard provisions similar to those outlined in the Strata Property Act
- c. Change of Building Ownership – develop a procedure and timeline for providing leaseholders with title transfer timeframes, new owner names and contact information and other related information
- d. Dispute remediation – Develop a chart outlining equitable remedies arising from dispute process

3. Standard contract provisions

Develop legislation that deems the following terms and rights to be contained in all Leasehold Housing contracts:

- a. Lessors are required to maintain a mandatory contingency fund as established in Standards and Procedures
- b. Monthly maintenance fees must be based on operating and maintenance costs of previous year
- c. Lessors must provide leaseholders with written financial justification for increases in maintenance fees and other expenses in a timely manner
- d. Lessors must provide leaseholders with audited annual financial reports that include current building insurance information, operating budgets, income and expense statements
- e. Lessors must maintain sufficient building insurance to cover both the full value of the building as determined by the yearly City property

tax assessment and any outstanding mortgages on the building, in order to cover the value of individual leasehold suites

- f. Lessors must maintain all facilities included in the lease and repair or replace them in a timely manner when required
- g. Lessors must ensure leaseholders have peace and quiet enjoyment of their premises, and when required take necessary remedial action in a timely manner
- h. Both parties to a dispute are required to participate in the established Dispute Resolution Process on application by either party.
- i. Both parties to a dispute are required to implement applicable equitable remedies as outlined in the Standards and Procedures
- j. Building leaseholders may elect a leaseholder committee to represent their interests and with whom the lessor is required to communicate about building and leasehold financial matters, daily maintenance and capital projects and any other matters pertaining to the health and safety of its residents
- k. Lessors must follow the Changes of Building Ownership procedure provided in Standards and Procedures
- l. Lessors must initiate the End of Lease procedure outlined in Standards and Procedures at minimum 10 years before the end of the lease

4. Consultation with Leaseholders

As a result of our precarious status, non-strata leaseholders in the private domain have been silenced and invisible in the public conversation about housing insecurity. We recommend that government consult with leaseholders to gather enough information about the impacts of these contracts to ensure their legislative changes provide the best possible housing security and protections urgently required by this at-risk population.

All of which is respectfully submitted

Lancaster Gate Tenants Committee

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