

Building Accessibility Appeal Tribunal
Service NL

Tim Horton's Countertop Heights
Appeal Hearing
Monday, January 29, 2018

Residential Tenancies Hearing Room
Motor Registration Building
Mount Pearl, NL

Appellant:

Owner/Operator
Tim Horton's

Respondent:

Mr. Dennis Eastman, P. Eng.
Director of Engineering & Inspection Services
Service NL

SUMMARY NOTES

1. The Appeal Tribunal, which consisted of Mr. John Hearn, as Chairman; Mr. Leon Mills, Ms. Patsy Yetman and Ms. Amanda Lush met on January 29, 2018 to adjudicate to an appeal requested in regards to a Tim Horton's restaurant at 30 Ropewalk Lane.
2. The Appellant, [REDACTED] contacted Mr. Dennis Eastman on December 27, 2017 to contest an Inspector's Order # 20549, issued on November 30, 2017, regarding the lowering of counter tops at that location.
3. The section of the Schedule to the Regulations that applies is as follows:

"Section 33 of the Building Accessibility Regulation states that:

Counters

33. (1) All counters serving the public shall have at least one barrier-free section in conformance with subsections (2) and (3).
(2) Barrier-free counter surfaces shall not be more than 865 millimeters above the floor.

As outlined in [REDACTED] letter of December 27, 2017, the restaurant had just underwent a cap light renovation (under 20% of replacement cost) at which time two service counter were lowered to meet the required 865mm height, as per Section 33 of the Building Accessibility Regulation. The inspector, Mr. Mark Fleming, however deemed the two counters to be four different counters, even though the owner regarded the counters as two service counters – Cash #1 and Cash #2. Furthermore the appellant pointed out that they had received a permit to complete the work based on their architect's drawings which showed the counters with two lowered sections.

4. Mr. Eastman responded formally to [REDACTED] of CMS Atlantic Inc. on December 14, 2017 via email regarding Service NL's interpretation of Section 33 of the Building Accessibility Regulations. In his letter Mr. Eastman stated:
 - *"It is my opinion that the counters where orders and financial transactions are conducted provide a distinctly different service than the food pick up counters and are, themselves, counters serving the public. Consequently, they must have at least one barrier free section with a barrier free counter surface not more than 865mm above the floor as required by section 33 (1) and (2) of the Schedule to the Buildings Accessibility Regulations."*
5. The tribunal first heard submissions from the Respondent, Mr. Dennis Eastman followed by submissions from the Appellant [REDACTED]

6. Following the submissions by Mr. Eastman and [REDACTED] the Appeal Committee met to discuss the matter. It was a rather quick unanimous decision by the Appeal Tribunal, that Service NL were unfairly interpreting the Act, which as presently written is open to interpretation. Furthermore, the fact that the architects drawings submitted were reviewed and a permit issued by Service NL to carry out the renovations was a deciding factor. In the Tribunal's opinion, the Appellant, carried out due diligence in renovating the restaurant and that it would be unjust for Service NL to require that Appellant to demolish and reconstruct counters that had just been installed as per drawings, approved and permitted by Service NL.
7. It was also noted by the Tribunal members, that owners, architects and engineers, depend on Service NL to review and approve their submitted drawings prior to the expenditure of capital dollars to construct or renovate their buildings. To ask a building owner to spend additional dollars to redo previously approved drawings is very unfair and unjust. This practice would also expose architects, engineers and other designers to liability exposure by a very upset client.

Respectfully submitted,

A black rectangular box redacting the signature of John Hearn.

John Hearn, MNLAA, MRAIC
Chairman, Building Accessibility Appeal Tribunal