

Building Accessibility Appeal Tribunal
Service NL

Southern Shore Folk Arts Council - Barrier Free Path of Travel to Accessible Washrooms
Appeal Hearing
Friday, March 29, 2019

Residential Tenancies Hearing Room
Motor Registration Building
Mount Pearl, NL

APPELLANT: SOUTHERN SHORE FOLK ARTS COUNCIL

RESPONDENT: MR. DENNIS EASTMAN, P. ENG.
DIRECTOR OF ENGINEERING & INSPECTION SERVICES
SERVICE NL

TRIBUNAL MEMBERS: MICHAEL H DUFFY – CHAIR
STEVEN BURBRIDGE
DERRICK HOUSE

BACKGROUND

This is an appeal to the Building Accessibility Appeal Tribunal of a decision by Dennis Eastman, Director of Engineering and Inspection Services upholding building accessibility inspection orders 30389 and 30390 which were issued on the 13th day of November, 2018 with respect to the Ferryland Folk Arts building located in the municipality of Ferryland.

The two (2) orders from which the appeal originates contain a total of 7 numbered paragraphs. Paragraph 7 on order 30390 is blank so there are 6 orders. Upon hearing the presentation of the Appellant, the Tribunal is satisfied that the Appellant has voluntarily agreed to complete 5 of those 6 items and has abandoned the appeal in respect to all but item 2 on order number 30389 which reads, "(2) Principal entrances added to Tea Room to be made accessible as per s.9 (3)(a)."

A margin note in the referenced order indicates "voluntary compliance s.7(3)." The Tribunal convened at approximately 9:35 a.m. on March 29, 2019 at which time the Appellant was invited to make its submissions.

Section 40(1)

A presentation was made to the Tribunal by [REDACTED] of the Folk Arts Council for Ferryland, assisted by [REDACTED] [REDACTED] the Folk Arts Council of Ferryland. The Appellant provided background information with respect to the subject property including much information regarding

the very long history regarding that property and the use to which the property has been put in recent years.

FINDINGS OF FACT

We accept the following facts as proven:

- (i) The subject property was registered with Service NL as exempt under Registration Number EA-4788 which exemption was current on or about 2001;
- (ii) in or about the year 2004 a ramp was installed in the subject property to provide access from the area now occupied by the Tea Room to the remaining portion of the building which was not at the same grade. That ramp was installed by the Appellant and it appears no application or no other notification to Service NL was made in respect to the installation of the ramp in 2004;
- (iii) In or about 2017 further renovations were undertaken to the area of the subject property now occupied by the Tea Room. In particular:
 - (a) a section of floor was raised,
 - (b) a staircase was removed,
 - (c) an extension was made to the building to accommodate the new staircase and entrance; and
 - (d) a new ramp was installed to provide access from the area occupied by the Tea Room to the remaining portion of the building.
- (iv) [REDACTED] confirmed the installation of the ramp in 2004 and installation of the new ramp in 2017 were done for the purpose, *inter alia*, of making the building more accessible to persons with disabilities.
- (v) No application was made to Service NL with respect to the renovations which occurred in or about 2017.
- (vi) The inspection of the subject property by Service NL and issuance of the orders giving rise to this appeal were the result of a third-party complaint respecting the exterior ramp located on the subject property.
- (vii) The Appellant confirmed the principal use of the building is for a dinner theatre, with a smaller Tea Room and use for various other public and private events as necessary in the community.

APPELLANT POSITION

In support of its position, the Appellant advised that it had the support of various members of the community who indicated that although the ramp in question does not meet the requirements of the Building and Accessibility Act and Regulations, they are fully able to use the facility and have no issue with accessibility. The Appellant further explained that creating a ramp which met the requirements of the Act and Regulations would, for them, pose difficulties with respect to efficient and effective use of the premises. The Appellant requested "status quo".

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STATUTORY PROVISIONS

The Tribunal considered the Building Accessibility Act RSNL 1990 Chapter B-10 as well as regulations made pursuant to that legislation. We specifically considered s.7(3) of the Act which reads as follows:

“7 (3) Where a person makes alterations to a building existing prior to December 24, 1981 to improve the availability and accessibility of the building to persons with disability, the alterations shall comply with the requirements of this Act.

1990 c55 s4;2006 c10 s6

We also considered the impact of Regulation 9(3)(a) which reads as follows:

“9 (3) The Act and these regulations shall apply to the addition to a building where
(a) The building addition contains a principal entrance”

We also considered Regulation 7 discussed infra. Which reads as follows:

“7 **Principal entrance** – where a building has a total floor area of less than 600 square metres, a principal entrance shall provide barrier free access to the storey which, in the opinion of the director, constitutes the major occupancy.”

We make initial note that s.7(3) of the Act and Regulation Sections 7 and 9(3)(a) all use the word “shall” and therefore where they apply they are mandatory.

ANALYSIS

From our review of the work which was carried out in 2017, we conclude there was an addition made to the subject property to accommodate the staircase to the second floor and that addition also included an entrance open to the public to provide access to both the Tea Room and the second floor offices. In the case of the second floor offices this is the only access. We therefore conclude that the entrance created by the 2017 addition to the building is “a principal entrance” within the meaning of s.9(3)(a) of the Regulations. Regulation 7 requires a barrier free access from a principal entrance to the storey which constitutes the major occupancy. We note the regulations refer to “a principal entrance” and not “the” principal entrance we therefore find that a building can have more than one principal entrance.

In this case, the Tea Room which now has a new principal entrance was not described in the Appellants as the major occupancy of the building. The major occupancy of the building is described by the Appellant as the dinner theatre operated in the larger space adjacent to the Tea Room. Therefore, we find that Regulation 7 in accordance to

Regulation 9(3)(a) mandates a barrier free access from the Tea Room to the remainder of the building. The ramp which has given rise to this appeal is the ramp which connects those two spaces and therefore that ramp must meet the requirements of the Act and Regulations as set out by the inspector in paragraph two of order 30389.

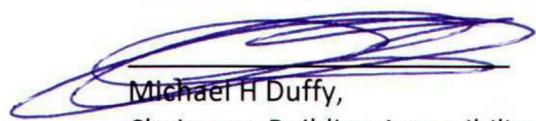
In this matter the evidence is that prior to the recent inspection and orders, the Appellant had completed the renovations which we earlier described to have occurred in 2017. These renovations included installation of a ramp. The Appellant described that renovation as simply placing a new ramp next to the previous ramp which had been installed in 2004. We do not accept that the 2017 ramp was simply a replacement of the 2004 ramp. In particular, the 2017 ramp was installed as part of a much larger modification of the structure involving raising the floor in the location of the previous ramp and removing a staircase as well as constructing a new entrance and an addition to accommodate the new staircase.

We find that the ramp installed in 2017 constitutes an alteration of the sort contemplated by s.7(3) of the Act. S.7(3) of the Act came into force in 2006 and therefore the voluntary alterations made in 2017 were subject to that provision. We find that having voluntarily undertaken an alteration to the subject property for the purpose of improving accessibility the Appellant must ensure that alteration, including the ramp in question meets the requirements of the Act and Regulations.

SUMMARY & ORDER

In summary, we therefore confirm the order contained at paragraph two (2) of order number 30389 and confirm the requirements of s.9(3)(a) of the Regulations as well as s.7(3) of the Act must be met. We further confirm that the Appellant has abandoned the appeal with respect to all other portions of order number 30389 and 30390. Therefore all six (6) orders of the building accessibility inspector are confirmed.

Respectfully Submitted,



Michael H Duffy,
Chairman, Building Accessibility Appeal Tribunal Council

_____- I concur.

Steven Burbridge
Building Accessibility Appeal Tribunal Council

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Derrick House
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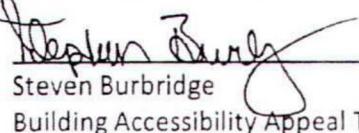
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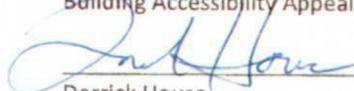
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