

Former Salsbury Drive tenant Ian Marcuse (right) wants damages from the property owner for evicting tenants and not following through on a planned renovation. Courier file photo

Salsbury development fight not over for evicted tenants

By Naoibh O'Connor-Staff writer

Salsbury Garden tenants are seeking damages for wrongful eviction just months after they were forced to leave their homes on land at the corner of Salsbury Drive and Napier Street.

The property, the site of two matching 1907 workers cottages and a large, forested garden nearly a century old, is owned by Niebuhr Construction. Niebuhr wanted to build two duplexes on the property, but tenants and other residents formed a group called Friends of Salsbury Garden, which fought the proposal through an appeal to the city's Board of Variance.

The tenants argued the houses and land have heritage value and the property adds needed park space on the East Side. The city had offered to buy the property, but Niebuhr said the offers didn't reflect the value of the land and the time and money the company had invested in it.

Last August, the Board of Variance quashed Niebuhr's development permit. Shortly afterwards, Niebuhr handed the tenants "end of tenancy agreements" and asked them to vacate by the end of November.

Ian Marcuse, one of the evicted tenants, said he received an extension on his eviction to Dec. 9. But now he believes Niebuhr didn't have any plans to renovate and the property's tenants should not have been evicted. He and three others have filed for damages through the Residential Tenancy Board. An arbitration hearing is scheduled for April 3.

Niebuhr Construction has also applied for a judicial review of the Board of Variance decision through B.C. Supreme Court.

Marcuse said documents Niebuhr filed for the judicial review application state the houses are too old and not economical enough to renovate. If that's true, Marcuse says, Niebuhr had no cause to evict.

If the residential tenancy board agrees, the penalty for wrongful eviction is two months rent, according to Marcuse. Rent for each of the homes at Salsbury Garden was \$875. A total of five tenants lived in the two houses.

"The damages are a slap on the wrist. [The owner] can sit on the property and still make a whole whack of money," Marcuse said. "[But] it was illegal what he's done in the first place. You can't evict tenants just because you don't like them. You have to have good reason for eviction-renovation, demolition or you're going to be occupying the house, for example. In this case it appears to us that he just doesn't like us."

The houses will sit empty while the judicial review process continues. Courts rarely rule against a finding of the Board of Variance.

Richard Niebuhr of Niebuhr Construction said he doesn't want to discuss his judicial review application until it's heard in court. He refuted Marcuse's claim that renovations will never happen.

"That's not what my affidavit says at all. It refers to more that we would prefer, we would choose not to renovate at this time. It doesn't mean we don't plan to," he said. "The whole reason for the judicial review is we're just exploring all of our options."

Although he's surprised the Salsbury Garden controversy has dragged on so long, he said tenants have a right to take the eviction to the residential tenancy board. "We'll have to sit down with an arbitrator and determine what's going to be fair for them," he said.

Niebuhr also believes his company has been portrayed unfairly by the development's opponents and that they haven't always acted ethically. "There are things I could talk about that they've

done in bad faith, which I'm not going to do because that's not how I go about things," he said.

Marcuse is nonetheless disappointed Niebuhr Construction didn't see the Friends of Salsbury Garden's point of view. "We were disappointed he didn't recognize there was overwhelming support in the community to protect the space and do something creative with it. Instead, he's taken a position that we're just a marginal few people... There are thousands of other sites that could be developed that are less controversial."

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