

**CITY OF MINNEAPOLIS
FOR THE DEPARTMENT OF
REGULATORY SERVICES**

ADMINISTRATIVE HEARING OFFICER

**In the matter of the Rental
Dwelling License held by
Mahmood Khan for the
Premises at 3223 Bryant Avenue N.,
Minneapolis, Minnesota**

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above entitled matter came on for hearing before Administrative Hearing Officer Fabian Hoffner on August 16, 2010, at 1:00 p.m. at Room 310, Minneapolis City Hall, Minneapolis, Minnesota. The City of Minneapolis was represented by Lee C. Wolf, Assistant City Attorney, Janine Atchison, District Manager Department of Housing Inspections and Housing Inspectors Sheila Rawski and Valerie Asante. Mahmood Khan, owner of 3223 Bryant Avenue N., was present with his attorney Todd Young.

After considering all of the evidence presented at the hearing and the arguments presented by both parties before, during and after the hearing, the Administrative Hearing Officer makes the following:

FINDINGS OF FACT

Mahmood Khan holds a current rental dwelling license for the property located at 3223 Bryant Avenue N., in the City of Minneapolis. The rental license application personally filed by Mr. Khan, lists himself as the owner of the property as well as the property manager responsible for the maintenance and management of the rental property. The contact address listed by Mr. Khan on the rental license application was 3972 Old Highway 8, Roseville, MN 55113.

On March 12, 2009, Housing Inspector Valerie Asante conducted an inspection at the property located at 3223 Bryant Avenue N. During the inspection Inspector Asante observed that a non-habitable basement room was being used as habitable space, specifically the room was being used as a bedroom. Inspector Asante observed a bed in the room along with bedding, pillows and the tenant admitted to using the room as a bedroom. The room did not meet the requirements of a bedroom as there was no egress window. Inspector Asante posted the property for unlawful occupancy with the placard stating that the violation was “unlawful basement occupancy- cannot use as a sleeping room.” On March 18, 2009, Inspector Asante issued written orders to the owner, Mahmood Khan, at his listed address of 2972 Old Highway 8, Roseville, MN 55113. The written orders directed Mr. Khan to discontinue the unlawful occupancy of the non-habitable basement space as a habitable room or dwelling unit. Mr. Khan was given until March 18, 2009, to comply with the orders.

On March 16, 2009, Inspector Asante issued a Notice of Director’s Determination of Non-Compliance. The Notice informed Mr. Khan that the property at 3223 Bryant Avenue N. failed to meet a licensing standard under M.C.O. § 244.1910, specifically the Notice stated that the property was in violation of subdivision (3) for a dwelling unit being over or illegally occupied. The Notice gave Mr. Khan until March 22, 2009, to bring the building into compliance. Upon inspection April 30, 2009, an inspection was completed at the property and Housing Inspector Rod Thomas abated the order as having been complied with.

On May 25, 2010, the Department of Inspections received a tenant complaint, regarding the property at 3223 Bryant Avenue N., from Minneapolis 311. Pursuant to Department policy, an inspection was to be completed at the property in response to the tenant complaint. Housing Inspector Sheila Rawski arrived at the property and was

allowed entry by one of the tenants. Upon entry Inspector Rawski completed an inspection and observed that a room in the basement of the property was being illegally occupied as a bedroom. Inspector Rawski observed a bed, mattress, bedding, a dresser and clothes. Inspector Rawski observed that there was no egress window in the bedroom making it a non-habitable room. Upon her return to the office, Inspector Rawski reviewed the record for the property and observed that the property had been “flagged” for illegal occupancy in March of 2009. Due to the prior occurrence of illegal occupancy, Inspector Rawski notified Manager Janine Atchison of the second occurrence of illegal occupancy at 3223 Bryant Avenue N.

Janine Atchison, District Manager with the Department of Housing inspections, oversees the rental license revocation process for the Department. Upon receiving the information regarding the second incident of illegal occupancy at 3223 Bryant Avenue N., Ms. Atchison reviewed the evidence and found that two qualifying incidents of illegal occupancy had occurred at 3223 Bryant Avenue N. and began the license revocation process by sending, on June 14, 2010, a Notice of Revocation, Denial, Non-Renewal, or Suspension of Rental License or Provisional License. The Notice stated that the property failed to meet the licensing standard M.C.O. § 244.1910 (3). Section 244.1910 (3) states that “No rental dwelling or rental dwelling unit shall be over occupied or illegally occupied in violation of the zoning code or the housing maintenance code.”

Notice of the recommendation to revoke the rental dwelling license was mailed to Mahmood Khan on June 14, 2010. This notice was mailed to the contact address that Mr. Khan personally supplied on his rental license renewal – 2972 Old Highway 8, Roseville, MN 55113. Mr. Khan was given 15 days to appeal the Notice of Revocation and on July 1, 2010, Mr. Khan filed a timely appeal.

CONCLUSIONS OF LAW

The City of Minneapolis Department of Housing Inspections issued valid orders, for a violation of M.C.O. § 244.1910 (3) which require that rental properties in the City of Minneapolis not be over-occupied or illegally occupied in violation of the zoning code or the housing maintenance code. The Department followed proper procedure in issuing a Notice of Non-Compliance, pursuant to M.C.O. § 244.1930 (b), which gave the owner fifteen days to bring the property into compliance with licensing standards M.C.O. § 244.1910 (3).

On a second occasion, a little over a year from the first violation, the City of Minneapolis Department of Housing Inspections again found a violation of M.C.O. § 244.1910 (3) which require that rental properties in the City of Minneapolis not be over-occupied or illegally occupied in violation of the zoning code or the housing maintenance code.

M.C.O. § 244.1940 states: "If after any period for compliance under section 244.1930 has expired, the director determines that the dwelling fails to comply with any of the licensing standards in sections 244.1910 or 244.1920, or the director has initiated an action to deny, revoke, suspend, or not renew a license pursuant to section 244.2020, the director shall mail the owner a notice of denial, non-renewal, revocation, or suspension of the license or provisional license." In this matter the property at 3223 Bryant Avenue N. was found to be in violation of M.C.O. § 244.1910 (3) on March 12, 2009. After the period for compliance had expired the property was again found to be in violation of M.C.O. § 244.1910 (3) on May 25, 2010.

The Department followed proper procedure in issuing a Notice of Revocation, Denial, Non-Renewal, or Suspension based upon the second violation of M.C.O. § 244.1910 (3).

RECOMMENDATION

That the rental dwelling licenses held by Mahmood Khan for the premises located at 3223 Bryant Avenue N., Minneapolis, Minnesota be revoked.

Dated Sept 27 2010



FABIAN HOFFNER
ADMINISTRATIVE HEARING
OFFICER

MEMORANDUM

The record in this matter is clear that there were two instances where the basement at the property located at 3223 Bryant Avenue N. was illegally occupied. On both March 12, 2009, and May 25, 2010, housing inspectors observed the basement room being used as a bedroom and that the room did not have the required egress windows to be used as a habitable room.

M.C.O. § 244.1940 states: “If after any period for compliance under section 244.1930 has expired, the director determines that the dwelling fails to comply with any of the licensing standards in sections 244.1910 or 244.1920, or the director has initiated an action to deny, revoke, suspend, or not renew a license pursuant to section 244.2020, the director shall mail the owner a notice of denial, non-renewal, revocation, or suspension of the license or provisional license.” In this matter the property at 3223 Bryant Avenue N. was found to be in violation of M.C.O. § 244.1910 (3) on March 12, 2009. After the period for compliance had expired the property was again found to be in violation of M.C.O. § 244.1910 (3) on May 25, 2010.

Janine Atchison testified that in 2004, the Minneapolis City Council amended M.C.O. § 244.1940 specifically to allow the Department to revoke a rental license upon a second violation of the illegal occupancy licensing standard. Ms. Atchison testified that prior to the amendment building owners, after having been discovered allowing the illegal occupancy of a property, would bring the building into compliance only to allow the illegal occupancy to occur again and come into compliance if they were caught a second or third time. To break the cycle of illegal occupancy at properties the ordinance was amended prior to the amendment the language in 244.1940 stated: “If after any period for compliance under Section 244.1930 has expired, the director determines that the dwelling still fails to comply with any of the licensing standards in Sections 244.1910

or 244.1920, or the director has initiated an action to deny, revoke, suspend, or not renew a license for conduct on premises in section 244.2020, the director shall mail the owner a notice of denial, non-renewal, revocation, or suspension of the license or provisional license.” (emphasis added). Upon amendment the word “still” was removed allowing for revocation to occur if, after a period for compliance has expired, the director determines that the dwelling fails to comply with a licensing standard.

Appellant claims that he took action to control his tenants and evicted them after they illegally occupied the basement of the property. Appellant and his handyman, however, admitted that they only check on the property if they are called by a tenant regarding a problem at the property. Further appellant’s submission of his eviction action against the tenants at the property shows that Appellant only brought the action to recover unpaid rent, specifically the settlement agreement between Appellant and his tenants only addresses the amount the tenants needed to pay to avoid eviction and does not address the tenants using the basement as a bedroom. Appellant also testified that he did not know of the illegal occupancy until he received the notice from the Department, from an inspection that occurred on May 25, 2010, while Appellant had filed the eviction action in early May and had a settlement agreement in place with the tenant on May 21, 2010, before the inspection even occurred.

Consequently, the City has met it’s burden of proof and Rental License should be revoke.

F.S.H.