

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

ADMINISTRATIVE HEARING OFFICER

**In the matter of the Properties
Located at 3523 Oliver Avenue N
Located in Minneapolis, MN and
Owned by Gollywog Properties LLC-Robert Serr**

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

The above entitled matter came on for hearing before Administrative Hearing Officer Ed Backstrom on February 23, 2012 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 and Janine Atchison, District Manager Department of Housing. Dale McCormick, Attorney at Law, appeared for Gollywog Properties, LLC. Robert Serr owner of Gollywog Properties was not present. After considering all of the evidence presented in this matter the Administrative Hearing Officer makes the following:

FINDINGS OF FACT

Gollywog Properties LLC-Robert Serr owns the property located at 3523 Oliver Avenue N. in the City of Minneapolis. Gollywog Properties LLC is listed on the Hennepin County property information records as the owner of the property. Gollywog Properties LLC currently has a rental license for the property. Robert Serr is listed as the person responsible for maintenance and management of the rental property. The application for the rental license lists his address as 5775 Wayzata Blvd. Suite #700, Minneapolis MN.

On March 26, 2010, Minneapolis Housing Inspector Joy Parizek conducted an inspection at the property located at 3523 Oliver Avenue N. The inspector found that 2nd floor was being illegally occupied as a bedroom. The use of the 2nd as a bedroom was illegal because the ceiling at its highest point was measured at 6 feet 1 inch, less than the code required 7 feet. On March 26, 2010 Inspector Parizek placed an Unlawful Occupancy placard on the property and on April 12, 2010 she issued orders to correct the violation. Notice of Director's Determination of Noncompliance for illegal occupancy was also sent to the owner on April 12, 2010. On subsequent inspection of the property on July 28, 2010 the inspector found that the property was vacant.

On October 20, 2011, in response to a complaint for no heat, Inspector Robin Utto conducted an inspection of the rental property located at 3523 Oliver Ave. N. She found that the 2nd floor was again being illegally used as a bedroom. The tenant told the Inspector that the 2nd floor attic had been rented as a bedroom. The Inspector again placed an Unlawful occupancy placard on the property.

March 1, 2011 Notice of Director's Determination of Noncompliance was issued to Robert Serr for nonpayment of property taxes for a number of rental properties including the property at 3523 Oliver Ave. N. Janine Atchison determined prior to the hearing that over \$4000 in taxes were still owed by the owner of the property located at 3523 Oliver Ave. N.

On November 8, 2011, a Notice of Revocation, Denial, Non-Renewal, or Suspension of Rental License was sent to Gollywog Properties LLC-Robert Serr at 5775 Wayzata Blvd. #700, Minneapolis, MN. The basis for the revocation was the second incidence of illegal occupancy and the delinquent property taxes.

The owner, through the testimony of the current property manager, stated that the owner suspected the tenant might illegally use the attic as a bedroom, and that she was verbally told not to do so. However there is nothing in the lease about such use nor did the owner or his representative conduct an inspection to see if the attic was being illegally occupied prior to the inspection by Inspector Utto.

The property in question is currently the subject of a sale and the taxes are in escrow as part of that pending sale at the time of the hearing.

On November 19, 2011, a proper appeal of the revocation was filed by Mr. Serr.

CONCLUSIONS

The City of Minneapolis, Department of Housing Inspections conducted a valid inspection at the property located at 3523 Oliver Avenue N.

M.C.O. § 244.1910(3) states: “No rental dwelling or rental dwelling unit shall be occupied or illegally occupied in violation of the zoning code or the housing maintenance code.” The property at 3523 Oliver Ave. N was in violation of this provision in March of 2010 and in October of 2011.

M.C.O § 244.1930, **Director’s determination of noncompliance; notice**, requires notice of the violation to be sent to the owner. A second violation does not require notification. The ordinance states:

However, if a building or dwelling unit fails to meet licensing standard 244.1910(2), (3), (4), (18), or (21), for a second time under the same owner /licensee, a notice of director’s determination of noncompliance shall not be required to be sent as the building or

dwelling unit may be subject to an action for denial; non-renewal; revocation or suspension pursuant to section 244.1940. (Emphasis added).

The department therefore properly initialed the revocation proceedings for the rental license held by Gollywog Properties LLC-Robert Serr for 3523 Oliver Ave. N.

Actual knowledge of the occurrence of the violation is not a requirement for the revocation of the rental license. As the department properly argued, requiring actual knowledge would have the adverse effect of rewarding an owner for not taking an active role in trying to eliminate such violations. However, a second violation does not require the revocation of the rental license because M.C.O. § 244.1930(3) states that the rental license may be revoked for the second violation involving illegal occupancy of a rental property.

In this matter the owner stated that he suspected that the tenant might be thinking of illegally using the attic as a bedroom. He did not set forth in the lease that such use was not permitted. Even after he became suspicious that the illegal occupation may occur he did not inspect the property until after the inspection which found the second violation. He did little proactively to prevent the illegal occupancy from occurring.

In addition M.C.O. § 244.1910 (a) **Licensing standards** states that failure to comply with any of the enumerated standards shall be adequate grounds for the revocation of a rental dwelling license. The standard set forth in section (11)a of M.C. O. §244.1910 states that there shall be no delinquent property taxes on a rental dwelling. The owner failed to pay his property taxes for an extended period of time. The fact that he may now have resolved the problem as part of a sale of the property does not provide a means to avoid the revocation of his dwelling rental license for 3523 Oliver Ave. N.

RECOMMENDATION

That the rental dwelling license held by Gollywog Properties LLC-Robert Serr as owner of the property, for 3523 Oliver Ave. N., in Minneapolis, Minnesota be revoked.

Dated March 3, 2011



EDWARD BACKSTROM
ADMINISTRATIVE HEARING
OFFICER