



Request for City Council Committee Action from the Department of

Date: December 12, 2007

To: Honorable Don Samuels, Chairperson Public Safety & Regulatory Services Committee

Referral to: City Council

Subject: Rental Dwelling License Retention- 430 8th St SE - Owner Richard Eischens

Recommendation:

On July 17, 2007 this item was heard by the Rental License Board of Appeals. The matter was forwarded for consideration to the Public Safety & Regulatory Services Committee of the Minneapolis City Council for hearing on December 12, 2007.

The Director of Inspections recommends that the City Council continue retention of the rental dwelling license held by Richard Eischens for the premises at 430 8th Street SE in Minneapolis, Minnesota be made subject to full compliance with the following conditions:

- The License Holder shall utilize a written and fully-executed residential lease agreement which specifies (1) which rooms may be lawfully utilized as sleeping rooms, (2) which sleeping room each tenant will utilize, (3) limits the number of unrelated persons who may reside at the residence to a maximum of three, and (4) requires that any proposed change by the tenants in the use or arrangement of sleeping rooms be submitted in writing to the Landlord and only approved if the arrangement is in conformance with all Code requirements.
 - The License Holder shall remove the door and hinges from within the back bedroom and store such off-site and shall ensure that no door is reinstalled within the back bedroom.
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Previous Directives None

Prepared or Submitted by Janine Atchison, District Supervisor 673-3715

Approved by: JoAnn Velde
JoAnn Velde, Deputy Director Housing Inspection Services

12/05/07
Date

Approved by: Henry Reimer
Henry Reimer, Director of Inspections

12/05/07
Date

Approved by: Rocco Forte
Rocco Forte, Assistant City Coordinator

12/6/07
Date

Permanent Review Committee (PRC) Approval _____ Not Applicable XX

Note: To determine if applicable see <http://insite/finance/purchasing/permanent-review-committee-overview.asp>

Policy Review Group (PRG) Approval _____ Date of Approval _____ Not Applicable XX

Note: The Policy Review Group is a committee co-chaired by the City Clerk and the City Coordinator that must review all requests related to establishing or changing enterprise policies.

Presenters in Committee (name, title)

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
- Other financial impact (Explain):
- Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact (use any categories that apply) Not Applicable

- Neighborhood Notification
- City Goals
- Comprehensive Plan
- Zoning Code
- Other

Supporting Information: See Findings of Fact

CITY OF MINNEAPOLIS
PUBLIC SAFETY & REGULATORY SERVICES COMMITTEE

In the matter of the Rental Dwelling License held by Richard Eischens for the Premises at 430 8th Street SE, Minneapolis, Minnesota.

PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION

This matter came on for hearing before the Rental Dwelling License Board of Appeals on July 17, 2007 in Room 319 of Minneapolis City Hall. Board Chair Brian Bushay presided. Other board members present included Clinton Blaiser, Daisy Barton, and Wayne Jensen. Board members Paul Thomas Kjornes, Steve Schachtman and Fathia Warsame were not present. Assistant City Attorney Joel Fussy was present as *ex officio* counsel to the board. Lee Wolf, Assistant City Attorney, represented the Inspections Division. The owner and manager of the licensed premises, Richard Eischens, was present and was represented by Patrick Burns, Esq. The matter was forwarded for consideration to the Public Safety & Regulatory Services Committee of the Minneapolis City Council for hearing on December 12, 2007

FINDINGS OF FACT

1. Richard Eischens holds a rental dwelling license (No. 509485) for the property located at 430 8th Street SE in the City of Minneapolis, Minnesota. At all times relevant to this action Richard Eischens was the owner and contact agent responsible for the maintenance and management of the rental property.

2. This matter was commenced by the Inspections Division seeking the imposition of adverse license action against the rental dwelling license held by Richard Eischens for the referenced property pursuant to M.C.O. § 244.1910, *Licensing standards*. The Inspections Division sought adverse license action based on the following minimum licensing standard:

244.1910. Licensing standards. The following minimum standards and conditions shall be met in order to hold a rental dwelling license under this article. Failure to comply with any of these standards and conditions shall be adequate grounds for the denial, refusal to renew, revocation, or suspension of a rental dwelling license or provisional license.

(3) 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.

3. On April 18, 2006 Minneapolis License Inspector Sarah Maxwell conducted a rental license inspection of the subject property. Inspector Maxwell holds the promotional rank of License Inspector II and has in excess of fifteen years of experience with the Inspections Division. Her inspection of the subject property found that the dwelling unit was occupied in violation of M.C.O. 244.830:

244.830. Arrangement of rooms. No dwelling or dwelling unit containing two (2) or more sleeping rooms shall have such room arrangements that access to a bathroom or toilet room intended for use by occupants of more than one sleeping room can be had only by going through another sleeping room; nor shall room arrangements be such that access to a sleeping room can be had only by going through another sleeping room or a bathroom or toilet room. Such arrangement which existed prior to November 2, 1920 are excepted from this section.

Inspector Maxwell observed that the front bedroom was occupied but also that the adjoining dining room was being used as a bedroom. This arrangement required an occupant of the front sleeping room to access a bathroom only by going through the adjacent dining

room which was being used as a sleeping room. Such an arrangement constitutes illegal occupancy under M.C.O. § 244.830.

4 Richard Eischens asserts that he had no knowledge of this illegal occupancy and that the tenant had moved a bed into the dining room area on his own volition. To support this contention, he submitted copies of classified advertisements placed with the *Minnesota Daily* during this time frame in which the property is advertised as a three bedroom unit (including the front bedroom the unit does contain two other lawful bedrooms excluding the dining room area).

5 Cailin Ryan-McKeever was a tenant in the property beginning in August 2006. She was shown the property, however, in May 2006 and testified that she observed the dining room being used as a sleeping room as well at that time. Although originally planning on sharing the unit with three other roommates, Ms. Ryan-McKeever ended up sharing the unit with two other roommates and only these three individuals signed the residential lease agreement.

6 Based on the illegal occupancy observed during her inspection, on April 20, 2006 Inspector Maxwell issued a Notice of Director's Determination of Noncompliance citing the illegal occupancy under M.C.O. § 244.830 and also issued an order to the License Holder to discontinue the illegal use of the property. Upon reinspection subsequent to June 1, 2006 the illegal occupancy violation had been abated.

7 On April 4, 2007 Inspector Maxwell conducted a new inspection of the rental property based on a complaint of illegal occupancy. The inspection revealed that the current tenants—Ms. Ryan-McKeever and her two roommates—were utilizing the unit in an arrangement which constituted illegal occupancy under M.C.O. § 244.830. Although the

tenants were not using the front bedroom or the dining room as sleeping rooms, they were using the side bedroom and the back bedroom was being utilized as two distinct sleeping rooms. The back bedroom in the unit has a wall separating the two areas of the room. When there is no door present closing-off this wall then the room may constitute a single bedroom, however if a door is present which is capable of being shut and locked then the two areas of the bedroom are capable of being utilized as two separate sleeping rooms. Inspector Maxwell's observations revealed that a door was present in this back room and that one tenant was using each portion of the room as a separate and distinct bedroom. Such an arrangement violates M.C.O. § 244.830 as the occupant of the back portion of this room is forced to access the unit's bathroom by traversing through the separately-utilized sleeping room created by the presence and use of the door. Based on this second incident of illegal occupancy, Inspector Maxwell issued a Notice of Revocation, Denial, Non-Renewal, or Suspension of Rental License on April 11, 2007.

8. Ms. Ryan-McKeever testified that the dividing door which caused the illegal occupancy in the back bedroom was present at all times that she was a tenant. Richard Eischens asserted that Ms. Ryan-McKeever and her two roommates had available to them the front room which could be lawfully utilized as a third bedroom but that they chose to cause the illegal occupancy violation by housing two individuals in the back bedroom while the door was present (had the door not been present the back bedroom could lawfully house two individuals). Mr. Eischens also asserted that the tenants were claiming illegal occupancy in order to break their lease as Ms. Ryan-McKeever conceded in her testimony that her roommates had experienced some problems with each other and were seeking to end the lease

through legal action, although she states that the illegal occupancy situation triggered the commencement of her legal action.

9. The revocation recommendation was made pursuant to M.C.O. §§ 244.1910(3) and 244.1940. Section 244.1910, *supra*, provides for the imposition of adverse license action based on illegal occupancy and section 244.1940 provides that an action to revoke a rental license may be commenced upon a second occurrence of an illegal occupancy violation at a given dwelling. Richard Eischens filed a due and proper appeal of the revocation recommendation.

10. Upon the close of the hearing in this matter on July 17, 2007 the Rental Dwelling License Board of Appeals was unable to reach a recommendation, with two members voting to uphold the revocation recommendation and two members voting to sustain the License Holder's appeal.

CONCLUSIONS

1. The Inspections Division followed the appropriate procedural steps and provided the necessary notices as required under the Minneapolis Code of Ordinances with regard to its recommendation to revoke the rental dwelling license currently held by Richard Eischens for the rental residence located at 430 8th Street SE in the City of Minneapolis.

2. The evidence adduced at the hearing in this matter indicates that the subject property was illegally occupied in April 2006 and again illegally-occupied in April 2007, in violation of M.C.O. § 244.830 and the licensing standard specified in M.C.O. § 244.1910(3).

3. The illegal occupancy violations which form the basis of this action have the potential to severely and adversely affect public health and safety as well as neighborhood livability. Adequate protection of public health, safety and welfare therefore requires the

establishment and enforcement of minimum rental housing and zoning standards. *See* M.C.O. §§ 244.30 & 520.30.

4. The referenced rental dwelling license held by Richard Eischens is subject to adverse license action under M.C.O. § 244.1910(3), which establishes minimum standards for retention of a rental dwelling license prohibiting any form of illegal or over occupancy and M.C.O. § 244.1940, which allows for the commencement of revocation proceedings upon a second established illegal or over occupancy violation.

RECOMMENDATION

That the continued retention of the rental dwelling license held by Richard Eischens for the premises at 430 8th Street SE in Minneapolis, Minnesota be made subject to full compliance with the following conditions:

- The License Holder shall utilize a written and fully-executed residential lease agreement which specifies (1) which rooms may be lawfully utilized as sleeping rooms, (2) which sleeping room each tenant will utilize, (3) limits the number of unrelated persons who may reside at the residence to a maximum of three, and (4) requires that any proposed change by the tenants in the use or arrangement of sleeping rooms be submitted in writing to the Landlord and only approved if the arrangement is in conformance with all Code requirements.
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