

**CITY OF MINNEAPOLIS
RENTAL DWELLING LICENSE BOARD OF APPEALS**

**In the matter of the Rental
Dwelling License held by
John J. Maher, Jr. for the
for the Premises at 1819 25th Avenue
North, Minneapolis, MN.**

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

This matter came on for hearing before the Rental Dwelling License Board of Appeals at 1:30 p.m. on Tuesday, May 19, 2009 in Room 014 of the Minneapolis Public Service Center located at 250 South 4th Street. Board Chair Brian Bushay presided. Other board members present, constituting a quorum, included Daisy Barton, Steven Schachtman, Cecelia Rodriguez-Melendez and Wayne Jensen. Lee Wolf, Assistant City Attorney, represented the Department of Inspections. The rental dwelling license holder, John J. Maher, Jr., was present at the hearing and was not represented by counsel.

FINDINGS OF FACT

1. John J. Maher, Jr. holds a current rental dwelling license for a three-unit residential building located at 1819 25th Avenue North, in the City of Minneapolis. The rental license application personally filed and executed by Mr. Anderson lists himself as the owner of the building as well as the property manager responsible for the maintenance and management of the rental property. City and county property records accepted into evidence at the hearing indicate that Mr. Maher's contact address is 50532 Shorewood Circle, Rush City, MN 55069. All applicable notices in this matter were sent to and received by Mr. Maher at said address.

2. This matter was commenced by the SAFE unit of the Minneapolis Police Department and the Department of Inspections to revoke the rental dwelling license held by Mr. Maher for the property at 1819 25th Avenue North, under Minneapolis Code of Ordinances (M.C.O.) § 244.2020. Section 244.2020, “Conduct on Licensed Premises,” requires a rental licensee to take appropriate affirmative action following conduct on the premises defined as disorderly under Section 244.2020(a). Specifically included within the ambit of disorderly use is “conduct by tenants and/or their guests on the licensed premises which is determined to be disorderly, in violation of [provisions] ... which prohibit the unlawful sale or possession of controlled substances.”

3. Notice of the recommendation to revoke the rental dwelling license was mailed to Mr. Maher on March 9, 2009, and was based upon the incidents as described below.

4. On March 5, 2008, officers from the Community Response Team (CRT) of the Minneapolis Police Department executed a narcotics search warrant on the upper unit at 1819 25th Avenue North. Upon execution of the warrant 7.5 grams of a substance which tested positive as crack cocaine was recovered from within the unit. The narcotics were discovered in multiple individually wrapped bindles. Additionally, a digital scale was recovered from within the premises. Three of the tenants and/or guests present in the unit were arrested on narcotics and disorderly house charges as a result of the search. The search warrant was obtained after a confidential reliable informant (CRI) completed several purchases of crack cocaine from the tenant of the unit in the weeks prior to March 5, 2008.

5. On March 20, 2008, Crime Prevention Specialist Jennifer Waisanen of the Minneapolis Police Department's SAFE unit mailed a First Notice of Conduct on Licensed Premises to Mr. Maher, pursuant to M.C.O. § 244.2020. This notice informed Mr. Maher that there had been an instance of disorderly use at the premises of 1819 25th Avenue North on March 5th involving narcotics possession and sales violations. The notice was recorded as a first notice of disorderly use of the premises, informed Mr. Maher that steps should be taken to prevent further violations, and noted that further disorderly use could result in the denial, revocation, non-renewal or suspension of the rental dwelling license. The notice cited M.C.O. § 244.2020, informing the license holder that it is a licensee's affirmative responsibility to take appropriate action following disorderly use by persons occupying the premises.

6. On September 26, 2008, officers from the Community Response Team (CRT) of the Minneapolis Police Department executed a second narcotics search warrant on the upper unit at 1819 25th Avenue North. Upon execution of the warrant 5.5 grams of a substance which tested positive as crack cocaine was recovered from various locations within the unit. Additionally, a crack pipe was recovered from within the premises. The tenant present in the unit was arrested on felony narcotics charges as a result of the search. This tenant was a different individual than the individuals arrested during the previous raid on the premises. The search warrant was obtained after a confidential reliable informant (CRI) completed a purchase of crack cocaine from the tenant of the unit in the weeks prior to September 26, 2008. After the fact, the tenant's lease was not renewed by Mr. Maher and he was ordered to vacate the premises the following month.

7. On October 15, 2008, Crime Prevention Specialist Jennifer Waisanen of the Minneapolis Police Department's SAFE unit mailed a Second Notice of Conduct on Licensed Premises to Mr. Maher, pursuant to M.C.O. § 244.2020.

8. The second notice advised Mr. Maher that a second incident of disorderly use had occurred at the subject property and that he was required to respond to the Minneapolis Police Department within ten (10) days with a written management plan detailing all actions taken to respond to disorderly use and to prevent further disorderly use of the premises. The notice also informed Mr. Maher that another incident of disorderly use of the rental premises in the next eighteen months could result in revocation of his rental dwelling license for the premises. Mr. Maher submitted a written management plan in response to the Second Notice of Conduct on Licensed Premises.

9. On February 12, 2009, officers from the Community Response Team (CRT) of the Minneapolis Police Department executed a third narcotics search warrant on the upper unit at 1819 25th Avenue North. Upon execution of the warrant multiple quantities of substances which tested positive as crack cocaine, marijuana and heroin were recovered from various locations within the unit. Additionally, a large amount of cash was recovered from within the premises. Two juveniles were arrested on felony narcotics charges as a result of the search. The juveniles were different individuals than the individuals arrested during the previous raid on the premises and were relatives and guests of the tenant of the unit.

10. On March 9, 2009, Crime Prevention Specialist Jennifer Waisanen of the Minneapolis Police Department's SAFE unit mailed a Notice of Recommendation due to the Third Incident of Disorderly Use: Section 244.2020 Conduct on Licensed Premises to

Mr. Maher. On March 24, 2009 a Notice of Revocation, Denial, Non-Renewal, or Suspension of Rental License or Provisional License was sent to Mr. Maher via certified mail and a return receipt was obtained verifying delivery and receipt of the notice. The notice advised that both the Inspections Division and the Minneapolis Police Department would recommend to the City Council that his rental dwelling license for 1819 25th Avenue North be revoked. The recommendation was made pursuant to M.C.O. § 244.2020, based on the three qualifying conduct on licensed premises incidents which had occurred at the premises.

11. On March 30 and April 3, 2009 Mr. Maher filed a proper appeal of the revocation recommendation and paid the required appeal fee. The Licensee, in his appeal and in testimony adduced and evidence submitted at the hearing in this matter, conceded that the three qualifying incidents of disorderly use of the premises had occurred. Mr. Maher asserted that he had served a notice to vacate upon the upper tenant after the occurrence of the second police raid. M.C.O. § 244.2020(g) provides in pertinent part:

No adverse license action shall be imposed where the instance of disorderly use of the licensed premises occurred during the pendency of eviction proceedings (unlawful detainer) or within thirty (30) days after a notice is given by the licensee to a tenant to vacate the premises, where the disorderly use was related to conduct by that tenant or his/her guests.

However, as noted in the ordinance a notice to vacate does not bar a revocation action unless it is served within thirty days *before* the disorderly use. In this case, the notice to vacate was served after the fact and therefore does not bar the proceeding.

12. The license holder concedes that he does not utilize a professional property management company or tenant screening service although at one time, prior to the disorderly use incidents, he did employ such a company. The license holder stated

that he planned to begin utilizing a tenant-placement organization that attempts to place prospective tenants with criminal histories into housing, an arrangement that would appear to be antithetical to any stated goal to lessen the potential for continuing criminal and nuisance activity at the rental property.

13. The incidents of disorderly use that occurred on and about March 5, 2008, September 26, 2008 and February 12, 2009 are instances of disorderly use within the meaning of M.C.O. § 244.2020(a), in that they each involved conduct by tenants or guests of tenants of the rental property which violated provisions of Minnesota Statutes, Sections 152.01 through 152.025, which prohibit the unlawful sale or possession of controlled substances.

CONCLUSIONS

1. At least three (3) incidents of conduct determined to constitute a disorderly use and defined as disorderly in M.C.O. § 244.2020(a) by tenants and/or guests occurred on the premises of 1819 25th Avenue North for which proper notices of disorderly use were issued.

2. The Licensee failed to take timely, appropriate action in response to notices from the Minneapolis Police Department concerning disorderly incidents on the premises of 1819 25th Avenue North.

3. The Minneapolis Police Department and the Inspections Division followed the appropriate procedural steps and provided the necessary notices as required under the Minneapolis Code of Ordinances.

4. The subject property has been the source of repeated and continuing criminal, disorderly and nuisance activity. The activities at this property have had a substantial negative impact on the surrounding community and have been a substantial drain upon the resources of the police and inspections department.

5. The rental dwelling license held by John J. Maher, Jr. for 1819 25th Avenue North is subject to adverse license action pursuant to M.C.O. §§ 244.2020(f). Revocation of the referenced rental dwelling license is the appropriate adverse license sanction.

RECOMMENDATION

That the rental dwelling license held by John J. Maher, Jr. for the premises at 1819 25th Avenue North, in Minneapolis, Minnesota be revoked.

Brian Bushay
Chair,
Rental Dwelling License Board of Appeals