

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

**ADMINISTRATIVE HEARING OFFICER**

---

**In the matter of the Rental  
Dwelling License held by  
Darrill B. Berry  
for the Premises at  
1637 Penn Avenue N. Minneapolis,  
Minnesota**

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

---

The above entitled matter came on for hearing before Administrative Hearing Officer Edward Backstrom on October 7, 2010, at 10:00 a.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 Tim Hammett, Crime Prevention Specialist (CPS). Darrill B. Berry owner of the property located at 1637 Penn Avenue N. was present. Also testifying for Mr. Berry were Yvette McDonald-McCarthy, Blanche Washington and Margret Washington.

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**

Darrill B. Berry is the owner of the property located at 1637 Penn Avenue N. in the City of Minneapolis. Darrell Berry applied for and was awarded a rental dwelling license for the building at 1637 Penn Avenue N. in the City of Minneapolis. The rental license

application lists Darrill Berry as the owner and the property manager responsible for the maintenance and management of the rental property. The application initially listed the contact address for Darrill Berry at 3440 3rd Avenue S., Minneapolis, MN. Mr. Berry subsequently filed a change of address listing his address as 2303 River Pointe Cir., Minneapolis, MN. Applicable property records admitted in this matter list Darrill B. Berry as the owner and taxpayer of record for the property with a mailing address of 3440 3<sup>rd</sup> Avenue S., Minneapolis, MN.

This matter was commenced by the SAFE unit of the Minneapolis Police Department and the Department of Inspections to revoke the rental dwelling license for the property at 1637 Penn Avenue N. under Minneapolis Code of Ordinances (M.C.O.) § 244.2020. Section 244.2020, "Conduct on Licensed Premises", requires a rental licensee to take appropriate action following conduct on the premises defined as disorderly under M.C.O. § 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 gambling; prostitution; the unlawful sale or possession of controlled substances; the unlawful sale of alcoholic beverages; noisy assemblies; the unlawful possession, transportation, sale, or use of a weapon and disorderly conduct."

Within 72 hours of May 21, 2010 the Minneapolis police department arranged a controlled buy of marijuana by a confidential reliable informant (CRI) from a male at 1637 Penn Ave. N. Such sale would be a felony under Minn. Stat. § 152.025. subd. 1. After the sale a search warrant was obtained and executed at the property on May 26, 2010. Marijuana was found on the premises. Andrew McDaniel was found on the premises and informed the

police that he resided at 1637 Penn Ave. N. with his children's mother. He was given a citation for operation a disorderly house.

As a result of the drug related activity CPS Tim Hammett sent First Notice of Revocation letter by certified mail to the owner of the property located at 1637 Penn Ave. N., Darrill Berry. A letter was sent to 3440 3<sup>rd</sup> Ave S. Minneapolis, MN., the address listed for the owner, Mr. Berry, in the county tax records for the property. Another letter was sent to 2303 River Pointe Cir., Minneapolis, MN., the change of address for the owner set forth in the amended rental license application for 1637 Penn Ave N. A signed receipt was returned for the letter sent to 3440 3<sup>rd</sup> Ave S. The letters set forth the requirement that Mr. Berry was required to submit a management plan for the property by June 18, 2010. The letters stated that further disorderly use of the dwelling could result in the denial, revocation, non-renewal or suspension of the rental license for 1637 Penn Avenue N.

On June 16, 2010 CPS Hammett had not received a response to the letter from Mr. Berry. CPS Hammett reached Mr. Berry by phone on that date at the telephone number listed on the change of address and phone number form Mr. Berry had provided to the City.

Mr. Berry claimed that his tenant had signed Mr. Berry's name on the receipt from the certified letter which was sent to 3440 3<sup>rd</sup> Ave. S. Mr. Berry did not live there at the time. Mr. Berry informed CPS Hammett that he had been notified by the Post Office that there was a certified letter at the Post Office which had been sent to his correct address. Mr. Berry was advised that he had ten days from the receipt of the letter to file his management plan or he could lose his rental license. CPS Hammett also sent Mr. Berry a copy of management plan guidelines by e-mail.

On July 7, 2010, the certified letter was returned to the City as unclaimed. On July 8, 2010, CPS Hammett was able to contact Mr. Berry by phone and told Mr. Berry that he had ten days to submit an acceptable written management plan or the City would move forward with the revocation of rental license for 1637 Penn Ave. N.

On Saturday, July 17, 2010 CPS Hammett was provided the management plan for the property via an email from Mr. Berry. The plan failed to address nearly all the key elements of a sound management plan. On July 19, 2010 Mr. Berry was advised by CPS Hammett via email of the reasons why the plan was not acceptable. The email also advised Mr. Berry that he had until July 21<sup>st</sup> to submit an acceptable plan. Prior to the date of the hearing, October 7, 2010, no further written information was received from Mr. Berry.

CPS Hammett and Mr. Berry spoke in person on August 26, 2010. They discussed the possibility of removing the tenant. Mr. Berry did not wish to take this action because of the effect this would have on the children living at the address with the tenant. Mr. Berry also expressed a desire to have a mentor help him.

Mr. Berry testified at the hearing that he did not dispute the facts. He did not dispute that the management plan he submitted was insufficient. However he claimed that he was already doing most of what was required in such a plan. Mr. Berry stated that most of facets of an acceptable plan were included in his tenant's lease. These are set forth in a lease introduced at the hearing. This was not the lease for 1637 Penn Avenue N., however. Mr. Berry's reliance on the language in the lease was also never conveyed to CPS Hammett prior to the date of the hearing.

Another component of a plan of action for the property acceptable to the City would have been the removal of the tenant. Mr. Berry introduced at the hearing an agreement that

the tenant would vacate the premises by October 31, 2010. Again this was not given to the City prior to the date of the hearing, nor would it enable the tenant to be required to vacate 1637 Penn Avenue N. on that date. It also would not satisfy the requirements set forth in M.C.O. § 244.2020(g).

Mr. Berry conceded that he did not respond in a timely manner. He stated that did not want the tenant to move because it would require him to do more work. He stated that other properties that he owned diverted his attention from what the city required in order to keep his rental license for 1637 Penn Avenue N. He also stated that he was concerned about where his tenant's children would go if they were evicted. He also stated admitted that he doesn't open his mail because he would be overwhelmed because of the number of properties he owns and what is required of him in order to manage these properties.

Although Mr. Berry's witnesses stated that he is a decent person who is trying to help the community, they also stated that he has trouble with being timely. Blanche Washington stated that Mr. Barry is a procrastinator.

On August 3, 2010, a Notice of Revocation, Denial, Non-Renewal, or Suspension of Rental License or Provisional License was sent to Darrell Berry at 3440 3<sup>rd</sup> Avenue S. as the owner and contact person for the property located at 1637 Avenue N. by certified mail. The notice advised that both the Inspections Division and the Minneapolis Police Department would recommend to the City Council that the rental dwelling license for 1637 Penn Avenue N. be revoked. The recommendation was made pursuant to M.C.O. § 244.2020, based on the incident of conduct on licensed premises occurring and the owner's and/or contact/manager's failure to submit an acceptable management plan. The notice was served via certified mail

and receipts were returned confirming the delivery and receipt of the notice by Darrell Berry. On August 19, 2010, Darrill Berry filed a proper appeal of the revocation recommendation.

## CONCLUSIONS

One incident 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 1637 Penn Avenue N. on or about May 21, 2010, for which proper notice of disorderly use was issued.

The instance of disorderly conduct consisted of the sale of a controlled substance. The owner and licensee failed to provide a satisfactory written management plan in response to the First Notice from the Minneapolis Police Department concerning the disorderly incident on the premises of 1637 Penn Avenue N. as required by M.C.O. § 244.2020(c).

The owner and licensee failed to take timely, appropriate action in response to notices from the Minneapolis Police Department concerning the disorderly incident on the premises of 1637 Penn Avenue N.

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.

The owner and licensee failed to comply with the requirement of M.C.O. § 244.2020(c) which requires the licensee to submit a written management plan to the Minneapolis Police Department. This failure provides a basis for adverse license action, specifically inclusive of revocation, against the rental dwelling license held by the licensee and any interest in the rental license at 1637 Penn Avenue N. The owner's reasons cited for

not complying with the City's requirements do not provide a legal justification for his failure to comply.

The rental dwelling license held by Darrill B. Berry as owner of the property, for 2717 15<sup>th</sup> Avenue S. is subject to revocation or suspension under M.C.O. §§ 244.2020(c). Revocation of the referenced rental dwelling license is the appropriate adverse license sanction.

### RECOMMENDATION

That the rental dwelling license held by Darrell B. Berry as owner of the property, for 1637 Penn Ave. N., in Minneapolis, Minnesota be revoked.

Dated Oct. 28, 2010

  
EDWARD BACKSTROM  
ADMINISTRATIVE HEARING  
OFFICER