

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

ADMINISTRATIVE HEARING OFFICER

**In the matter of the Rental
Dwelling License held by
Joseph Abell & Joseph Primas
For the Premises at 1223 42nd 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 July 19, 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, and Janine Atchison, District Manager Department of Housing Inspections. Joseph A. Columbus Abell and Marion Abell, owners of 1223 42nd Avenue N., were present.

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

Joseph Abell holds a current rental dwelling license for the property located at 1223 42nd Avenue N., in the City of Minneapolis. The rental license application personally filed by Mr. Abell, lists himself as the owner of the property and Joseph Primas as the property manager responsible for the maintenance and management of the rental property.

On December 6, 2007, Patricia Martin, a former tenant at the property located at 1223 42nd Avenue N., had a judgment docketed against Joseph Primas. The judgment was in connection to her lease for renting the property located at 1223 42nd Avenue N.

In April of 2008, a Contract for Deed was executed between Mr. Joseph Abell and Mr. Joseph Primas, whereby Mr. Abell was to purchase the property located at 1223 42nd Avenue N. from Mr. Primas. The executed Contract for Deed was not filed with Hennepin County. At the same time the Contract for Deed was executed Mr. Primas and Mr. Abell executed a quit claim deed that was filed in Hennepin County showing Mr. Abell to be the owner of the property.

In 2008 and 2009, Mr. Joseph Primas had applied for and was awarded a rental license for the property located at 1223 42nd Avenue N. even though he was no longer the listed owner of the property.

Minneapolis Department of Housing Inspections received information regarding the unsatisfied judgment in the Fall of 2009. A review of the records on the property On January 27, 2010, showed that the property located at 1223 42nd Avenue N. had an invalid rental license as there had been a change in ownership at the property, with Joseph Abell now being listed as the owner for the property, and a new rental license had not been applied for.

Written orders, dated January 28, 2010, required the former owner and holder of the rental license, Joseph Primas, to update the rental license application to be current, and an immediate administrative citation was issued in the amount of \$500.00.

On February 9, 2010, the citation was appealed and the matter came before this Hearing Officer on March 16, 2010. This Hearing Officer found that a violation and imposed but stayed the \$500.00 fine and ordered that Mr. Abell and Mr. Primas provide proof to the City of Minneapolis that both Mr. Abell and Mr. Primas own the property or that Mr. Abell obtain a rental license in his name by March 16, 2010.

On March 22, 2010, Mr. Abell obtained a rental license indicating that he was the owner of the property and that Mr. Primas was the manager responsible for the maintenance and management of the property.

On March 30, 2010, a Director's Determination of Non-Compliance was sent to Joseph Abell and Joseph Primas notifying them that the property was in violation of Minneapolis Code of Ordinances § 244.1910 (11)b, which states:

the licensee or applicant shall have satisfied all judgments duly entered or docketed against the licensee or applicant by any court of competent jurisdiction arising out of the operation of a rental property business. This subsection shall not be found to have been violated if the licensee or applicant demonstrates that the underlying case or action leading to the entry of judgment is being properly and timely removed to district court or otherwise appealed, or when the judgment is being paid in compliance with a payment plan accepted by either a court possessing jurisdiction over the judgment or the judgment creditor or during any period when the enforcement of the judgment has been duly stayed by such a court. This subsection shall become effective January 1, 2008.

The notice gave a time period in which the property could be brought into compliance by paying the unsatisfied judgment. After the time for compliance expired the judgment remained unsatisfied and on May 6, 2010, a Notice of Revocation, Denial, Non-Renewal, or Suspension of the rental license was sent to Joseph Abell and Joseph Primas.

On June 4, 2010, an appeal was filed by Joseph Abell.

CONCLUSIONS

The City of Minneapolis Department of Housing Inspections' orders, for a violation of M.C.O. § 244.1910 (11) b, which requires that rental property owners have satisfied all judgments duly entered or docketed against the licensee or applicant by any court of competent jurisdiction arising out of the operation of a rental property business, was not valid due to the change in ownership of the property located at 1223 42nd Avenue N.

Joseph Abell was in violation of M.C.O. § 244.1910 (15), which states: The licensee or applicant must have a current, complete, and accurate rental dwelling application on file with the director of inspections in accord with the provisions of section 244.1840. Mr. Abell

testified that after the change in ownership at the property the rental license was renewed showing that Mr. Joseph Primas was still the owner of the property.

Joseph Abell was in violation of M.C.O. § 244.1910 (19), which states: The provisions of this section are not exclusive. Adverse license action may be based upon good cause as authorized by Chapter 4, Section 16 of the Charter. This section shall not preclude the enforcement of any other provisions of this Code or state and federal laws and regulations. The failure to make the required change on the rental license can and will lead to tenants not knowing which person is the proper landlord at a property and who they need to bring an action against if there develops an issued in their renting of a property. Without the proper information on a rental license tenants will not have the correct information when bringing an action against a landlord who may not be the owner of the property.

RECOMMENDATION

That the rental dwelling licenses held by Joseph A. Columbus Abell for the premises located at 1223 42nd Avenue N., Minneapolis, Minnesota be revoked.

Dated _____ 2011

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 attempts to claim 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.