

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF COTTAGE GROVE

In the Matter of Derrick and Autumn
Lehrke

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

The above-entitled matter came on for a hearing before Administrative Law Judge Perry Wilson on May 28, 2015 at the Office of Administrative Hearings in St. Paul, Minnesota.

Autumn Lehrke and Derrick Lehrke (Appellants) appeared on their own behalf and without counsel. Korine Land, City Attorney, appeared on behalf of the city of Cottage Grove (City).

STATEMENT OF THE ISSUE

Is the Compliance Order issued by the City to Appellants based upon an erroneous interpretation of the City Code or upon a misstatement or mistake of fact?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the Compliance Order is based upon a correct interpretation of the City Code and is not based on a misstatement or mistake of fact. The Administrative Law Judge recommends that the City Administrator **AFFIRM** the Compliance Order.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following

FINDINGS OF FACT

1. Appellants are the managers of a single-family rental home located in the City.¹
2. On February 10, 2015, Appellants filed with the City an application for renewal of the rental license for the home.²

¹ Ex. 3.

² *Id.*

3. On March 3, 2015, the City's building inspection division conducted an inspection of the property prior to relicensing as required by Title 9-7-8 of the City's Code.³

4. The inspector found four deficiencies in the property that were not in compliance with City and Minnesota rules.⁴ These deficiencies were:

- a. No ground fault interrupter on outlet by basement wet bar sink;
- b. Screen missing from bedroom window;
- c. Accumulated ice on air conditioner from leaking porch roof;
- d. Kitchen sink admittance valve not code compliant.

5. Appellants' home was inspected by the City in 2013 and the conditions identified as City Code violation in the March 3, 2015 inspection were not identified at that time.⁵

6. Appellants were notified of the inspection findings by e-mail dated March 4, 2015. They were advised that these deficiencies were to be corrected and re-inspection conducted by March 18, 2015.⁶

7. The Appellants did not schedule a re-inspection by March 18, 2015.⁷ The City sent a reminder of the re-inspection obligation to Appellants by e-mail dated March 27, 2015.⁸

8. In response to the March 27, 2015 reminder, Appellants requested, by e-mail, that they receive a physical letter reciting the inspection findings and re-inspection obligations.⁹

9. The letter requested by Appellants was mailed by the City on March 27, 2015.¹⁰ The letter sets forth the deficiencies found in the March 3, 2015 inspection and sets April 6, 2015 as the deadline for Appellants to correct the four issues and schedule a re-inspection of the home.¹¹

10. On May 4, 2015, the City sent Appellants a letter stating that because the required re-inspection was not scheduled or performed, the matter of the rental license renewal would be referred to the Cottage Grove City Council for possible denial of the rental license application.¹² The May 4 letter further advised that the Appellants could

³ *Id.*

⁴ Ex. 3.

⁵ Testimony of Robert LaBrosse.

⁶ *Id.*

⁷ Test. of Emily Schmitz.

⁸ Ex. 6.

⁹ *Id.*

¹⁰ Ex. 7.

¹¹ *Id.*

¹² Ex.8.

appeal the decision to recommend denial of the license within 15 days by written request and that such an appeal would stay City Council action.¹³

11. The deadline for Appellants to complete repairs and have the property re-inspected was extended to May 22, 2015.¹⁴

12. By e-mail dated May 12, 2015, Appellants appealed the determination set forth in the May 4 letter.¹⁵

13. The conditions found in the March 3, 2015 inspection of Appellants' property have not been repaired and no re-inspection has been conducted.¹⁶

Based upon the above findings of fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Minn. Stat. §§ 14.50, .55 (2014), and City Code § 9-7-14 provide the Administrative Law Judge and the Cottage Grove City Administrator with the authority to conduct this proceeding and to consider the validity of the Compliance Order issued to Appellants. The role of the Administrative Law Judge is to make findings, conclusions, and a recommendation on that subject.

2. The City gave the Appellants proper and timely notice of the hearing in this matter, and the City has complied with all of the law's substantive and procedural requirements. This matter is properly before the Administrative Law Judge.

3. City Code § 9-7-14 A states that the issue for decision is whether the "compliance order is based upon erroneous interpretation of [the City Code]... or upon a misstatement or mistake of fact."

4. City Code § 9-7-14 C provides that upon appeal the housing official's recommendation may be reversed, modified or affirmed in whole or in part.

5. Appellants' rental housing unit was not in compliance with City Code upon inspection on March 3, 2015 in that:

- a. there was no Ground Fault Interrupter on the electrical outlet by the basement bar sink in violation of City Code § 9-7-9 B.4;
- b. a screen was missing from a bedroom window in violation of City Code § 9-7-9 B.14;

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Ex. 9.

¹⁶ Test. of E. Schmitz; Lehrke closing statement.

- c. kitchen sink air admittance valve was not in compliance with Minnesota's Plumbing Code in violation of Minn. R. 4715.2540, governing proper venting;
- d. the air conditioner was not properly maintained because a significant amount of ice accumulated on the outside unit in violation of City Code § 9-7-6 A.3.

6. Appellants received proper and timely notice of the Correction Order resulting from the March 3, 2015 inspection and of their obligation to correct the deficiencies and complete a re-inspection of the home.

7. Appellants have not repaired the deficiencies listed in the Compliance Inspection Report and have not completed a re-inspection of the home.

8. The Compliance Order set forth in the Inspection Report dated March 3, 2015 is based upon correct interpretations of the City Code.

9. The Compliance Order set forth in the Inspection Report dated March 3, 2015 is not based upon a misstatement or mistake of fact.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Cottage Grove City Administrator should **AFFIRM** the Compliance Order set forth in the Inspection Report dated March 3, 2015.

Dated: June 11, 2015

s/Perry Wilson

PERRY WILSON
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

The recommendation contained in this Report and Recommendation is not a final decision. The hearing process has been conducted and this Report has been made pursuant to Cottage Grove City Code § 9-7-14. Pursuant to that Code section, the Cottage Grove City Administrator will make the final decision on Appellants' appeal after considering this Report and Recommendation and such other matters as the Administrator deems proper.

MEMORANDUM

There was no dispute that the deficient conditions found to exist in Appellants' home in the March 3, 2015 inspection did exist. There was no evidence that these conditions have been corrected by Appellants. In addition, Mr. Lehrke stated in his closing argument that the kitchen sink vent is not up to code and needs to be repaired, but that the repair must be done by a licensed plumber.

The missing screen, the ice on the air conditioner and the missing Ground Fault Interrupter are violations of the City Code. There was evidence that these conditions are life safety issues.¹⁷

During the hearing, Appellants questioned whether delivery of the Correction Order and inspection results to them by e-mail was in compliance with City procedure. The facts show that Appellants received the e-mail and the follow up letter with the same content. Even if the original e-mail was not a proper means of delivery of the inspection results, Appellants had adequate notice of the results of the inspection and had from March 3 to May 22, 2015 to complete the repairs and re-inspection process.

Appellants also questioned why the conditions discovered in the March 3, 2015 inspection were not found in the 2013 inspection. The evidence showed that discovery of other deficiencies in later inspections is not unusual because the inspection process is dependent upon the physical observations of each individual inspector.

P. M. W.

¹⁷ Test. of R. LaBrosse.