

STATE PUBLIC HOUSING GRIEVANCE PROCEDURE

1. General Overview

- A. Department of Housing and Community Development (DHCD) regulations (760 CMR 6.08) require each local housing authority (LHA) to have a grievance procedure of which the purpose shall be the prompt and reliable determination of grievances. The procedure must be available to state-aided public housing tenants, participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP), and to individuals who file appeals pursuant to 760 CMR 8.00 (Privacy and Confidentiality).
- B. A grievance is defined as: (1) an allegation that an LHA or an LHA employee has acted or failed to act in accordance with the tenant's lease or any statute, regulation, or rule regarding the conditions of tenancy and the alleged action or failure to act has adversely affected the status, rights, duties or welfare of the grievant and/or a household member; (2) an allegation that an LHA or an LHA employee has acted or failed to act in accordance with any statute, regulation, or rule regarding the program and that the alleged action or failure to act has adversely affected the status, rights, duties, or welfare of the grievant or a household member; or (3) an appeal by a data subject pursuant to 760 CMR 8.00.
- C. The meaning of a statute, regulation or rule shall not be the subject of a grievance. A dispute between a tenant and another tenant or household member, in which the LHA is not involved, shall not be the subject of a grievance. A grievance shall not be filed by a tenant on behalf of another tenant or any household member of another tenant.

2. Initiation of a Grievance

- A. A grievance regarding whether good cause exists for terminating a lease shall be initiated by a tenant, in writing, and shall be mailed (postmarked) or delivered to the LHA at its main office within seven (7) days after a notice of lease termination has been given to the tenant by the LHA.
- B. A grievance regarding whether cause exists for terminating participation in the MRVP or AHVP shall be initiated by a program participant, in writing, and shall be mailed (postmarked) or delivered to the LHA at its main office within seven (7) days after a notice of program termination has been given to the tenant by the LHA.
- C. A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed (postmarked) or delivered to the LHA at its main office no more than fourteen

- (14) days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance, provided the LHA shall have discretion to permit a grievance to be initiated late.
- D. In the event that a tenant files a grievance as to the amount of a redetermined rent within fourteen (14) days of the LHA's notice of the redetermined rent, the tenant shall continue to pay the rent then in effect (unless the redetermined rent is lower) until final disposition of the grievance. Upon final disposition of the grievance, the tenant shall pay any additional amounts determined to have been due but not paid since the effective date set out in the notice of redetermined rent or the LHA shall credit the tenant with any amounts paid but determined not to have been due.
- E. The LHA shall permit additional time for initiation of a grievance if the LHA shall find that there was a good reason for late initiation of the grievance and that the late initiation would not cause prejudice to the LHA. The LHA shall have available forms on which a grievance may be initiated.

3. Informal Settlement Conference

Promptly after the initiation of a grievance, unless otherwise provided, the LHA's Executive Director or his or her designee shall give the grievant the opportunity to discuss the grievance informally in an attempt to settle the grievance without the necessity of a grievance hearing. The LHA shall give reasonable advance notice to the grievant and his or her representative (if any) of a time and place for an informal settlement conference, unless such a conference shall have taken place when the grievance was delivered to the LHA. At the informal settlement conference, the LHA and the grievant may be represented by a lawyer or by a non-lawyer. If the grievance is resolved at the informal settlement conference, the LHA and grievant shall acknowledge the terms of the resolution in writing. If a grievance is resolved at the informal settlement conference no grievance hearing shall be held. If the grievance is not resolved at the informal conference, a grievance hearing shall be held. Failure to attend an informal settlement conference shall not affect a grievant's right to a grievance hearing.

4. Right to a Hearing

A. The LHA's hearing panel shall conduct hearings on grievances filed by a public housing tenant, a program participant, or a data subject concerning a grievable matter, provided that no grievance hearing regarding whether good cause exists for terminating a lease shall be requested or held under any of the circumstances specified in MGL c.121B, s32, including the following circumstances:

- (1) in the event of non-payment of rent;
- (2) in the event the LHA has reason to believe that tenant or household member:
 - a. has unlawfully caused serious physical harm to another tenant or employee of LHA or any other person lawfully on the LHA's property;
 - b. has unlawfully threatened to cause serious physical harm to any member of a tenant household or an LHA employee or any person lawfully on the LHA's

- property;
- c. has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or of the LHA or of any person lawfully on the LHA's property, if such conduct involved a serious threat to the health or safety of any such person;
- d. has unlawfully possessed, carried or kept a weapon on or adjacent to the LHA's property in violation of MGL c.269 s10;
- e. has unlawfully possessed or used an explosive or incendiary device on or adjacent to LHA's property or has otherwise violated MGL c.266 s101, 102, 102A or 102B;
- f. has unlawfully possessed, sold or possessed with intent to distribute a class A, B, or C controlled substance, as defined in MGL, c94C s31, on or adjacent to the LHA's property;
- g. has engaged in other criminal conduct which has seriously threatened or endangered the health or safety of any member of a tenant household, an LHA employee, or any person lawfully on the LHA's property, or
- h. has engaged in behavior which would be cause for voiding the lease pursuant to the provisions of MGL, c139 s19; or

(3) In the event the LHA has reason to believe that a guest of a tenant or a guest of a household member has engaged in any of the behavior listed in subparagraph 4 A (2) and that the tenant knew beforehand or should have known beforehand that there was a reasonable possibility that the guest would engage in misconduct.

5. Hearing Date and Notice of Hearing

- A. The LHA shall schedule a grievance hearing regarding whether good cause exists for terminating a lease within fourteen (14) days after the date on which the LHA receives the grievance. At such time, the LHA shall set a date for the hearing no more than thirty (30) days from the date of the request for a grievance hearing (or as soon as reasonably practical thereafter) and at least fifteen (15) days prior to the date of termination. The LHA shall give grievant written notice of the date, time and place at least seven (7) days before the hearing. At the grievance hearing any additional reason(s) for termination of the lease, which arose subsequent to the date of the notice of termination, shall be considered so long as the LHA has given written notice to the grievant as to the additional reason(s) not less than three (3) days before the hearing, or, if the additional reason(s) for termination shall have arisen within such three (3) day period, a subsequent session of the hearing may be scheduled on not less than three (3) days notice to consider such reason(s). In lease terminations if grievant is entitled to request a grievance hearing and has made a timely request, the LHA shall not file a summary process summons and complaint seeking an eviction pending the hearing and a decision or other resolution in the LHA's favor.
- B. A hearing of a grievance regarding an issue other than lease termination shall be scheduled as soon as reasonably convenient following receipt of the grievance. The LHA shall give reasonable advance written notice of the time and place of the hearing to the grievant and to his or her representative, if any is known.

C. The LHA or the Presiding Member may reschedule a hearing by agreement of the LHA and the grievant; or upon a showing by the grievant or by the LHA that rescheduling is reasonably necessary.

6. Pre-Hearing Examination of Relevant Documents

Prior to a grievance hearing the LHA shall give the grievant or his or her representative a reasonable opportunity to examine LHA documents which are directly relevant to the grievance. Following a timely request, the LHA shall provide copies of such documents to grievant and for good cause (including financial hardship), may waive the charge for the copies.

7. Persons Entitled to be Present

The grievance hearing shall be private unless the grievant requests that it be open to the public. If the grievant requests an open hearing, the hearing shall be open to the public unless the Presiding Member of the grievance panel otherwise orders. The LHA and the grievant shall be entitled to specify a reasonable number of persons who may be present at a private hearing. A challenge to the presence of any such person shall be decided by the Presiding Member. At the grievance hearing, the LHA and the grievant may be represented by a lawyer or by a non-lawyer. Each person present at the hearing shall conduct himself or herself in an orderly manner or he or she may be excluded. If the grievant misbehaves at the hearing, the hearing panel by majority vote may take other appropriate measures to deal with the misbehavior including dismissing the grievance.

8. Procedure at Grievance Hearings

The hearing panel shall conduct the grievance hearing in a fair manner without undue delay. The Presiding Member shall initially take appropriate steps to define the issues. Thereafter, relevant information, including testimony of witnesses and written material, shall be received regarding such issues. Both the grievant and the LHA shall be entitled to question each other's witnesses. Procedure at the hearing shall be informal, and formal rules of evidence shall not apply. The hearing shall be tape recorded. The panel members may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and LHA rules and policies. The panel members may request the LHA or the grievant to produce additional information which is relevant to the issues or which is necessary for a decision to be made provided that the other party is provided an opportunity to respond to such additional information.

The tapes of the hearing shall be maintained by the LHA until any applicable appeals have been decided. During that time grievant and or his or her representative may listen to the tapes at the LHA's offices.

9. Written Decision by the Grievance Panel

Within fourteen (14) days following the hearing or as soon thereafter as reasonably possible, the hearing panel shall provide the LHA with a written decision on the grievance, describing the factual situation and ordering whatever relief, if any, that shall be appropriate under the circumstances and

under applicable laws, regulations, rules and/or policies. The decision shall be made by a vote of at least a majority of the panel members who heard the hearing. The decision shall be based on the information at the grievance hearing and such additional information as may have been provided to the hearing panel at its request. The LHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative if any. A copy of the decision (with names and personal identifiers deleted) shall thereafter be maintained at the LHA and shall be open to public inspection.

10. Review by the LHA's Board

In cases where the decision of the hearing panel concerns whether good cause exists for terminating a lease, there shall be no review by the LHA's Board. In other cases, in the event that the grievant or the LHA believes that: (a) the decision of the hearing panel is not supported by the facts; (b) the decision does not correctly apply the terms of the lease or applicable laws, regulations, rules and/or policies; or (c) the subject matter is not grievable, within fourteen (14) days of mailing or other delivery of the decision, the grievant or the LHA may request review of the decision by the LHA's Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the LHA and grievant to make oral presentations and/or submit documentation. The Board may also permit the hearing panel to make a presentation. The Board's review shall be at an open meeting unless an executive session is warranted pursuant to the Open Meeting Law. The decision of the Board shall be in writing and shall explain its reasoning. If a written decision is not rendered within forty-five (45) days from the date a review is requested, the decision of the Board, when rendered, shall specify a reason showing that there has been no undue delay.

11. Review by the Department of Housing and Community Development

In the event that the LHA's Board shall make a material change in a decision of the grievance panel, upon written request of the grievant, made to DHCD within fourteen (14) days of mailing or other delivery of the Board's decision, DHCD shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board. DHCD shall mail copies of its decision to the LHA and the grievant or to their attorneys.

12. Effect of a Decision on a Grievant

The final decision on a grievance (after any properly requested administrative reviews have been decided) shall be binding between the LHA and the grievant with respect to the particular circumstances involved in the grievance, provided that if a court has jurisdiction to determine a matter which has been subject to decision on a grievance, the court's determination on the matter shall supersede the decision on the grievance. In the event the hearing panel's decision on a grievance determines that good cause exists for terminating a lease, the LHA may, upon receipt of the decision, file a summary process summons and complaint, and there shall be no review by the Board or DHCD. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court. As between the LHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.

GRIEVANCE PROCEDURE PROVISIONS FOR A THREE MEMBER HEARING PANEL

- (1) **Three Member Hearing Panel.** All grievance hearings and determinations of a matter subject to this grievance procedure shall be by a three member hearing panel except as otherwise provided herein. One member (and an alternate member to serve in the event of the member's unavailability for a hearing) shall be chosen by the LHA and one member (and such an alternate member) shall be chosen by the affected local tenant organization(s) LTO(S)). The third member (and such an alternate member) shall be chosen by agreement of the other two members. The third member (including an alternate member) shall not be a board member of the LHA or an officer of an LTO. Whenever a member (including an alternate member) is chosen, notice of the choice shall be given to the member and shall specify the term, not to exceed seven years, for which the member so chosen shall serve. A copy of the notice shall be given to the LHA (if the LTO made the choice) or to the LTO(s) (if the LHA made the choice). Each member so chosen shall mail or deliver his or her written acceptance to the LHA promptly after being chosen. The LHA shall maintain all such notices and acceptances in its files.

A hearing panel so chosen shall serve all tenants of state-aided public housing represented by the LTO(s) in the city or town as well as those who are unrepresented by an LTO, and all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA.

Each member (including each alternate member) shall annually certify to the LHA in writing that he or she is ready, willing and able to serve; failure so to certify within 10 days of receipt of a written request by the LHA shall render the member's position vacant. Upon a vacancy, however created, a new member shall be appointed in the same manner as the previous member was appointed. The LHA shall maintain all such certifications in its files.

- (2) **Impartiality of Members.** No member of a hearing panel, which is to determine a particular matter shall have or shall appear to have any direct personal or financial interest in the outcome. No member of a hearing panel, which is to determine a particular matter shall be related by blood or marriage to any party or to any person who is the source of evidence as to facts that are disputed by the parties. No member may determine matters which directly concern his or her own housing or the housing of a family member or his or her own status or the status of a family member in that housing.

Each member of the hearing panel shall determine any matter at issue impartially and objectively. Any panel member, who shall be or shall appear to be unable to determine any particular matter impartially or objectively on the basis of the evidence and applicable law, shall remove himself or herself as a member of the panel hearing the particular matter, or, if he or she fails to do so, shall be removed from the panel by the Presiding Member upon written objection by the LHA, any affected LTO, or the person who requested the hearing. Any member of a hearing panel who shall willfully obstruct prompt and reliable

determination of any matter before the panel shall be removed from the panel for that hearing by the Presiding Member upon such an objection.

- (3) **Removal of a Member.** A member (including an alternate member) may be permanently removed as a member at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias, or partiality. The LHA may remove the member which the LHA appointed and the LTO(s) may remove the member which the LTO(s) appointed, after notice to the member and the opportunity for him or her to be heard. The LHA and the LTO(s) may jointly remove the member (or alternate) appointed by agreement of their appointees, after such notice and opportunity to be heard. If the LHA and LTO(s) fail to agree on removal of a member chosen by agreement of their appointees, DHCD may remove that member for cause upon written request by either the LHA or an LTO. The written request to DHCD shall contain a detailed specification of charges. DHCD's decision whether to remove a member shall be in writing mailed to the member, the LHA and the affected LTO(s). Prior to removing a member for cause, DHCD shall give the member, the LHA and all affected LTO(s) the opportunity to be heard.
- (4) **Designation of a Presiding Member.** Following their appointment a majority of the members (including alternate members) shall designate in writing one member to be the Presiding Member, who shall preside at grievance hearings or shall designate some other member to do so if he or she shall be absent. A majority of the members may designate in writing a different Presiding Member at any time. Written notice of the designation of a Presiding Member shall be given to the LHA and the LTO(s).
- (5) **Scheduling.** The LHA shall be responsible for scheduling and other administrative matters, including all necessary notices. The LHA shall consult each panel member and insofar as reasonably possible shall schedule hearings at times convenient for him or her or for his or her alternate.
- (6) **Quorum.** Reasonable efforts shall be made to have a three member panel hear and decide each grievance. If a panel member without adequate notice to the LHA fails to appear on a scheduled hearing date, or, if a panel member and his or her alternate are both not available at any time reasonably convenient for the other panel members, two members shall constitute a quorum and may render a decision. If a panel member removes himself or herself or is removed after a grievance hearing has been held on a grievance, the remaining two members may render a decision on the grievance.

Accepted by Local Tenants Organization - 08/20/00

Adopted by SHA Board of Commissioners - 08/22/00