

## **NEEDHAM HOUSING AUTHORITY GRIEVANCE POLICIES AND PROCEDURES**

### **1. GENERAL OVERVIEW**

Both State and Federal Law require each local housing authority to have a grievance procedure of which the purpose shall be the prompt and reliable determination of grievances.

- A. Applicability -- The grievance procedure is available to state-aided public housing tenants, federally aided public housing tenants, tenants participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP), tenants participants in the Section 8 Voucher Program and to individuals who file appeals pursuant to 760 CMR 8.00 (Privacy and Confidentiality).
  
- B. Definition of a Grievance
  - 1. Tenancy Related -- An allegation by a tenant that the Needham Housing Authority (hereinafter, the NHA) or a NHA 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 tenant or a household member;
  
  - 2. Voucher Program Related -- An allegation by a voucher program participant that the NHA or a NHA 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 tenant or household member.
  
  - 3. Personal Data Related -- An appeal pursuant to 760 CMR 8.05 by a data subject who objects, with respect data held by the NHA, to the accuracy, completeness, pertinence, timeliness, relevance, use, or dissemination of his/her personal data; or who objects to the NHA's denial of access to his/her personal data.
  
  - 4. Other -- Any dispute which a tenant may have with respect to NHA action or failure to act in accordance with NHA policies, rules and regulations, which adversely affects the individual tenant's rights, duties, welfare or status.
  
  - 5. Except that the following shall not be subject to a grievance:

- i. The meaning of a statute, regulation, or rule.
- ii. A dispute between a tenant and another tenant or household member, in which the LHA is not involved.
- iii. Any grievance filed by a tenant on behalf of another tenant or any household member of another tenant.

## **2. INITIATION OF A GRIEVANCE**

- A. Lease Termination -- 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 NHA at its main office within seven (7) days after notice of lease termination has been given to the tenant by the NHA.
- B. Voucher Termination -- A grievance regarding whether good cause exists for terminating participation in the MRVP or AHVP, or Section 8 Voucher program shall be initiated by the participant in writing, and shall be mailed (postmarked) or delivered to the NHA at its main office within seven (7) days after notice of program termination has been given to the tenant by the NHA.
- C. Other Matter -- A grievance regarding some other matter shall be initiated by a grievant in writing, and shall be mailed (postmarked) or delivered to the NHA at its main office within 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 that the NHA shall have discretion to permit a grievance to be initiated late.
- D. Additional Time -- The NHA shall permit additional time for initiation of a grievance if the NHA shall find that there was good reason for late initiation of the grievance and that the late initiation would not cause prejudice to the NHA.
- E. Grievance Hearing Request Form – When initiating a grievance, the grievant shall fill out, sign and submit the NHA Grievance Request Form, specifying:
  1. The reason for the grievance, and
  2. The action or relief sought.

## **3. GRIEVANCES REGARDING REDETERMINED RENT**

- A. In the event that a tenant files a grievance as to the amount of a re-determined rent within fourteen (14) days of the NHA's notice of the re-determined rent, during the informal settlement conference process the tenant shall continue to pay the existing

rent then in effect (unless the re-determined rent is lower) until final disposition of the grievance.

- B. 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 re-determined rent or the NHA shall credit the tenant with any amounts paid but determined not to have been due.

**4. INFORMAL SETTLEMENT CONFERENCE**

- A. Promptly, following the initiation of a grievance, unless otherwise provided, the NHA's Executive Director or his or her designee shall give the grievant the opportunity to discuss the grievance informally.
- B. Attempts shall be made to settle the grievance informally without the necessity of a grievance hearing. The NHA 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 NHA.
- C. At the informal settlement conference, the NHA and the grievant may be represented by a lawyer or by a non-lawyer. At the discretion of NHA, the grievant may bring an authorized service animal.
- D. Following the informal settlement conference, a summary of such discussion shall be prepared within a reasonable time and one copy shall be given to the tenant and one retained in the NHA's tenant file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor, and shall specify the procedures by which a formal grievance hearing may be obtained if the tenant is not satisfied.
- E. If the grievance is resolved at the informal settlement conference, the NHA and grievant shall acknowledge the terms of the resolution in writing, and no formal grievance hearing shall be held.
- F. If a grievance is not resolved at the informal conference, a grievance hearing shall be held if the grievant submits a written request for such hearing to the NHA at its main office within fifteen (15) calendar days after receipt of the summary of discussion pursuant to this policy. They shall have the opportunity to submit an amended Grievance Hearing Form.

- G. Failure to schedule or attend an informal settlement conference shall not affect a grievant's right to a formal grievance hearing.

5. **RIGHT TO A FORMAL HEARING AND HEARING EXCLUSIONS**

- A. Hearing Officer -- The NHA's impartial hearing officer, shall be a person other than the person who made or approved the action under review or a subordinate of such person. He/she shall conduct hearings on grievances filed by a public housing tenant, household member or program voucher participant. The hearing officer shall be appointed by the Board of Commissioners. Tenant organizations will be contacted for comment and recommendations regarding appointments, and these comments will be considered by the NHA.
- B. Formal Grievance Hearing must be Properly Requested -- If the grievant does not properly request a hearing as set forth herein, then the NHA's prior disposition of the grievance shall become final; provided, that failure to request a hearing shall not constitute a waiver by the grievant of his/her right thereafter to contest the NHA's action in disposing of the complaint in an appropriate judicial proceeding.
- C. Disputed Rent to be Placed in Escrow -- Before a hearing is scheduled involving a dispute in the amount of rent which the NHA claims is due, the grievant must establish an escrow account for the amount in dispute and provide proof of the existence of the account. All payments due prior to the month in which the alleged act or failure to act took place must be paid in full. The grievant shall, thereafter, deposit the monthly rent due in the escrow account each month until the grievance is resolved by a decision of the hearing officer. The NHA may require proof that such deposits are being made.

These requirements must be waived when a tenant is eligible for: (1) the financial hardship exemption from minimum rent requirements as provided by 24 C.F.R. §5.630; and (2) welfare benefits reduction in calculation of family income as provided by 24 C.F.R. §5.615.

Unless this requirement is waived by the NHA, the failure to make such payments shall result in a termination of the grievant's right to grieve under this procedure; provided, however, that failure to make the above-designated payment shall not constitute a waiver of any right the grievant may have to contest the NHA's disposition of the grievance in an appropriate judicial proceeding.

- D. Issues which are NOT grievable under this Policy -- No grievance hearing shall be requested or held regarding whether good cause exists for terminating a lease under any of the circumstances specified in M.G.L. c. 121B, § 32, including the following circumstances :
  - 1. In the event of non-payment of rent; or

2. In the event the NHA has reason to believe that a tenant or household member :
  - a. Has unlawfully caused serious physical harm to another tenant or employee of the NHA or any other person lawfully on the NHA's property,
  - b. Has unlawfully threatened to cause serious physical harm to any member of a tenant household or an NHA employee, or any person lawfully on the NHA's property,
  - c. Has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or of the NHA or of any person lawfully on the NHA's property, if such conduct creates or maintains 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 NHA's property in violation of MGL c.269 §10,
  - e. Has unlawfully possessed or used an explosive or incendiary device on or adjacent to the NHA's property or has otherwise violated MGL c.266 §§101, 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, c.94C §31, on or adjacent to the NHA'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, a NHA employee, or any person lawfully on the NHA's property,
  - h. Has engaged in behavior which would be cause for voiding the lease pursuant to the provisions of M.G.L. c. 139, § 19, or
  - i. In the event that the NHA has reason to believe that a guest of a tenant or a guest of a household member had engaged in any of the behavior listed in the subparagraphs above (a) through (h) if that the tenant knew or should have known that there was a reasonable possibility that the guest would engage in misconduct.

**6. HEARING DATE AND NOTICE OF HEARING**

A. Scheduling -- The NHA shall schedule a formal grievance hearing to determine whether good cause exists for terminating a lease within fourteen (14) days or as soon as reasonably practical after the date on which the NHA receives the grievance. A hearing of a grievance regarding any other issue, shall be scheduled as soon as reasonably convenient following receipt of the grievance.

1. As such, the NHA shall set a date for the hearing no more than thirty (30) days from the date of the request for a hearing (or as soon as practicable thereafter) and at least fifteen (15) days prior to the date of termination.

2. The NHA shall give the grievant and his or her representative (if any) reasonable advance written notice of the date, time and place at least seven (7) days before the hearing.
- B. Treatment of Additional Reasons for Termination -- At the formal hearing, any additional reason(s) for termination of the lease, which arose subsequent to the date of the notice of termination, shall be considered:
  1. So long as the NHA has given written notice to the grievant as to the additional reason(s) not less than three (3) days before the hearing, or
  2. 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 days' notice to consider such reason(s).
- C. Suspension of Eviction Proceedings pending the Hearing -- In lease terminations, if the grievant is entitled to request a grievance hearing and has made a timely request, the NHA shall not file a summary process Summons and Complaint seeking an eviction pending the hearing and a Decision or other resolution in the NHA's favor.
- D. Rescheduling of Hearing -- The NHA or the hearing officer may reschedule a hearing by agreement or upon a showing by the grievant or by the NHA that rescheduling is reasonably necessary.
- E. Failure to Appear at the Hearing -- If the grievant or the NHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for a period not to exceed five (5) work days or may make a determination that the party has waived his/her right to a hearing. Both the grievant and the NHA shall be notified of the determination by the hearing officer; provided however, that a determination that the grievant has waived his/her right to a hearing shall not constitute a waiver of any right the grievant may have to contest the NHA's disposition of the grievance in an appropriate judicial proceeding.

7. **PRE-HEARING EXAMINATION OF RELEVANT DOCUMENTS**

- A. Prior to a grievance hearing, the NHA shall give the grievant or his or her Representative a reasonable opportunity to examine NHA documents, including records and regulations, that are directly relevant to the grievance.
- B. Following a timely request, the NHA shall provide copies of such documents to the grievant and, for good cause (including financial hardship), may waive the charge for the copies.

- C. If the NHA does not make the document available for examination upon request by the complainant, the NHA may not rely on such document at the grievance hearing. If the NHA does not make such documents available for examination upon request by the tenant and the hearing is regarding termination of tenancy or eviction, the NHA may not proceed with the eviction.

**8. PERSONS ENTITLED TO BE PRESENT**

- A. The grievance hearing shall be private unless the grievant requests in writing that it be open to the public.
- B. If the grievant requests an open hearing, the hearing shall be open to the public unless the hearing officer otherwise orders.
- C. The NHA and the grievant shall be entitled to specify a reasonable number of persons who may be present at a private hearing. At the discretion of the hearing officer, the grievant may bring an authorized service animal.
- D. A challenge to the presence of any such person shall be decided by the hearing officer.
- E. At the hearing, the NHA and the grievant may be represented by a lawyer or by a non-lawyer.
- F. The NHA shall provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable Accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants. If the grievant is visually impaired, any notice to the grievant which is required under this procedure must be in accessible format.
- G. Each person present at the hearing shall conduct himself in an orderly manner or he or she may be excluded by the hearing officer.
- H. If the grievant misbehaves at the hearing, the hearing officer may take other appropriate measures to deal with the misbehavior, including dismissing the grievance.

**9. PROCEDURE AT GRIEVANCE HEARINGS**

- A. The hearing officer shall conduct the grievance hearing in a fair manner without undue delay:

1. The hearing officer shall initially take appropriate steps to define the issues.
  2. Thereafter relevant information, including testimony of witnesses and written material, shall be received regarding such issues.
  3. Both the grievant and the NHA shall be entitled to question each other's witnesses.
- B. Procedures at the hearing shall be informal, and formal rules of evidence shall not apply.
- C. The hearing shall be tape-recorded by the NHA and may be tape-recorded by the grievant.
- D. The grievant or the NHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of the transcript.
- E. The hearing officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations, and NHA rules and policies.
- F. The hearing officer may request the NHA or 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.
- G. The tapes of the hearing shall be maintained by the NHA until any applicable appeals have been decided. During that time, grievant or his or her representative may listen to the tapes at the NHA's offices.

**10. WRITTEN DECISION BY THE HEARING OFFICER**

- A. Within fourteen (14) days following the hearing or as soon thereafter as reasonably possible, the hearing officer shall provide the NHA 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.
- B. The hearing officer may render a decision without proceeding with a hearing if it is determined that the issue has been previously decided in another proceeding.

- C. The decision shall be based on the evidence at the grievance hearing and such additional information as may have been provided to the hearing officer at his or her request.
- D. The NHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative (if any).
- E. A copy of the decision (with names and personally identifiable information deleted) shall thereafter be maintained at the NHA and shall be open to public inspection.

**11. REVIEW BY THE NHA's BOARD**

- A. Availability of NHA Board Review – Either the grievant may appeal the hearing officer’s decision to the NHA Board. However NHA Board review of a decision of the hearing officer is NOT available for grievances:

- 1. Involving the termination of a lease.
- 2. Filed by participants in the Section 8 voucher program

- B. In other cases, in the event that the grievant or the NHA believes that:

- 1. The decision of the hearing officer is not supported by the facts;
- 2. The decision does not correctly apply the terms of the lease or applicable laws, regulations, rules and/or policies; or
- 3. The subject matter is not grievable,

within fourteen (14) days mailing or other delivery of the decision, the grievant or the NHA may request a review of the decision by the NHA's Board.

- C. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the NHA and grievant to make oral presentations and/or submit documentation.
- D. The Board may also permit the hearing officer to make a presentation.
- E. The decision of the Board shall be in writing and shall explain its reasoning.
- F. 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.

**12. REVIEW BY THE BY THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

- A. With respect to grievances filed by state subsidized tenants (Linden/Chambers or Matthew House) are by participants in MRVP and ALHV programs, inn the event that the NHA's Board shall make a material change in the decision of the hearing officer, the grievant may make a written request to DHCD for a review of the decision.
- B. Such request must be made in writing by the grievant within fourteen (14) days of mailing or other delivery of the decision of the Board.
- C. DHCD shall review the decision of the Board and shall render a written Decision upholding, setting aside, or modifying the decision of the Board.
- D. DHCD shall mail copies of its decision to the NHA and the grievant or to their attorneys.

**13. EFFECT OF A DECISION ON A GRIEVANT**

- A. The decision on a grievance shall be binding between the NHA 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.
- B. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court.
- C. As between the NHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.
- D. Except as otherwise provided herein, in the event the hearing officer's decision on a grievance determines that good cause exists for terminating the lease, the NHA may, upon receipt of the decision, file a summary process summons and complaint, and there shall be no further review by the Board, HUD, or DHCD.