

## **GRIEVANCE PROCEDURE**

### **Part A**

#### **1. General Overview**

- A. Department of Housing and Community and 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) 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 the grievance is resolved at the informal settlement conference no grievance hearing shall be held. If a 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 Officer 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, §32, 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 the 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 §10;
  - 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 §§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 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, §19; 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 of 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 Hearing Officer 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 Hearing Officer 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 Hearing Officer. 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 Officer may take other appropriate measures to deal with the misbehavior including dismissing the grievance.

## **8. Procedure at Grievance Hearings**

The Hearing Officer shall conduct the grievance hearing in a fair manner without undue delay. The Hearing Officer 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 Hearing Officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and LHA rules and policies. The Hearing Officer 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 tape(s) 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 Officer 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 based on the information at the grievance hearing and such additional information as may have been provided to the Hearing Officer at his or her 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 Officer 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 Officer 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.

## **Part B** *(Option 1 for LHAs with LTO(s))*

### **1. Single Hearing Officer**

All grievance hearings and determinations of grievances shall be handled by a single Hearing Officer. The Hearing Officer shall be appointed to serve for a term not to exceed seven years and shall serve all residents of state-aided public housing and all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA.

The LHA shall from time to time nominate one or more persons to serve as Hearing Officer(s) to preside at and conduct hearings and to render prompt and reliable written determinations of matters at issue. The LHA shall submit its written nomination(s) for Hearing Officer(s) to each Local Tenant Organization (LTO). Each nomination shall include a resume of the nominee and the length of the term for which he or she is nominated. Within five (5) days of receipt of a nomination any LTO may make a written request to the LHA to interview the nominee. Following such a request for an interview by an LTO, the LHA shall make prompt arrangements for an interview between the nominee and the LTO(s) which made the request. Within thirty (30) days after the receipt of a nomination or within five days after its interview of a nominee, whichever is later, any LTO may approve or disapprove the nominee by giving written notice to the LHA. A notice of disapproval shall include the specific reason(s) why the LTO disapproved the nominee. If all LTO(s) shall approve a nominee or if no LTO shall disapprove a nominee within the requisite time, the nominee shall become a Hearing Officer upon written acceptance mailed or delivered to the LHA which shall then notify the LTO(s).

Each Hearing Officer shall annually certify to the LHA in writing that he or she is ready, willing and able to serve; failure to so certify within ten (10) days of receipt of a written request by the LHA shall render the Hearing Officer's position vacant.

### **2. Impartiality of the Hearing Officer**

No Hearing Officer or a member of his or her family shall have or shall appear to have any direct personal or financial interest in the outcome of any matter before him or her. No Hearing Officer shall be related by blood or marriage to any party or to any person who gives evidence as to facts which are disputed by the parties. No Hearing Officer 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 Hearing Officer shall determine any matter at issue impartially and objectively on the basis of the evidence and applicable law. Any Hearing Officer, who shall be or shall appear to be unable to determine any matter impartially and objectively shall remove himself or herself as Hearing Officer, whether or not he has been requested to do so.

### **3. Removal of the Hearing Officer**

A Hearing Officer may be permanently removed from office at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias or partiality. The LHA and the LTO(s) may agree on removal after notice to the Hearing Officer and the opportunity for him or her to be heard. In the absence of agreement, DHCD may remove a Hearing Officer for cause upon a request by the LHA or an LTO. Prior to removing a Hearing Officer, DHCD shall require a detailed written specification of the reason(s) for removal and, if it finds the specification to set out good and sufficient cause, shall give the Hearing Officer, the LHA and the LTO(s) the opportunity to be heard. DHCD's decision whether to remove a Hearing Officer shall be in writing mailed to the Hearing Officer, the LHA, and the LTO(s). If a written specification fails to detail good and sufficient cause for removal, DHCD shall deny a request for removal without a hearing.

### **4. Appointment of Interim Hearing Officer**

If there shall not be a Hearing Officer able and willing to serve for one or more pending matters and if use of the appointment process in Part B, section 1 of this grievance procedure would likely cause significant delay with potential adverse consequences to either the LHA or the grievant, the LHA with notice to the LTO(s) may request that an interim Hearing Officer be named by DHCD. Such a request shall be in writing and shall specify the reason for the request. The LTO(s) shall be given a reasonable opportunity to comment on the request. If DHCD finds there to be a reasonable need for an interim Hearing Officer, DHCD shall name an interim Hearing Officer. DHCD may name a previously disapproved nominee to serve as interim Hearing Officer if it finds that an LTO's stated reasons for disapproval did not constitute good and sufficient cause for disapproving the nominee.

An interim hearing officer shall have all the powers and duties of a hearing officer and shall serve in the pending matters for which he or she was appointed. An interim hearing officer may be nominated by the LHA to be hearing officer in the manner set out herein.

## **5. Scheduling**

The LHA shall be responsible for scheduling and other administrative matters, including all necessary notices. The LHA shall consult with the hearing officer and shall schedule hearings at times convenient for him or her.

### **Part B**     *(Option 2 for LHAs without any LTO)*

#### **1. Single Hearing Officer**

All grievance hearings and determinations of grievances shall be handled by a single Hearing Officer. The Hearing Officer shall be appointed to serve for a term not to exceed seven years and shall serve all residents of state-aided public housing and all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA.

The LHA shall from time to time nominate one or more persons to serve as Hearing Officer(s) to preside at and conduct hearings and to render prompt and reliable written determinations of matters at issue. The LHA shall notify tenants of its nominees for Hearing Officer(s) by posting all such nominations on all bulletin boards intended for notices of general interest to tenants. Each nomination shall include a resume of the nominee and the length of the term for which he or she is nominated. Within thirty (30) days after the posting of a nomination ten (10) or more tenants may disapprove the nominee by giving signed written notice to the LHA. A notice of disapproval shall include the specific reason(s) why such tenants disapproved the nominee. In the absence of a disapproval, the nominee shall become a Hearing Officer upon written acceptance mailed or delivered to the LHA which shall then post notice thereof.

Each Hearing Officer shall annually certify to the LHA in writing that he or she is ready, willing and able to serve; failure to so certify within ten (10) days of receipt of a written request by the LHA shall render the Hearing Officer's position vacant.

#### **2. Impartiality of the Hearing Officer**

No Hearing Officer or a member of his or her family shall have or shall appear to have any direct personal or financial interest in the outcome of any matter before him or her. No Hearing Officer shall be related by blood or marriage to any party or to any person who gives evidence as to facts which are disputed by the parties. No Hearing Officer 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 Hearing Officer shall determine any matter at issue impartially and objectively on the basis of the evidence and applicable law. Any Hearing Officer, who shall be or shall appear to be unable to determine any matter impartially and

objectively shall remove himself or herself as Hearing Officer, whether or not he has been requested to do so.

### **3. Removal of the Hearing Officer**

A Hearing Officer may be permanently removed from office at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias or partiality. The LHA may remove a Hearing Officer after notice to the Hearing Officer and the opportunity for him or her to be heard.

### **4. Appointment of Interim Hearing Officer**

If there shall not be a Hearing Officer able and willing to serve for one or more pending matters and if use of the appointment process in Part B, section 1 of this grievance procedure would likely cause significant delay with potential adverse consequences to either the LHA or the grievant, the LHA may request that an interim Hearing Officer be named by DHCD. Such a request shall be in writing and shall specify the reason for the request. Notice of the request shall be posted, and tenants shall be given a reasonable opportunity to comment to DHCD about the request. If DHCD finds there to be a reasonable need for an interim Hearing Officer, DHCD shall name an interim Hearing Officer. DHCD may name a previously disapproved nominee to serve as interim Hearing Officer if it finds that the stated reasons for disapproval did not constitute good and sufficient cause for disapproving the nominee.

An interim Hearing Officer shall have all the powers and duties of a Hearing Officer and shall serve in the pending matters for which he or she was appointed. An interim Hearing Officer may be nominated by the LHA to be Hearing Officer in the manner set out herein.

### **5. Scheduling**

The LHA shall be responsible for scheduling and other administrative matters, including all necessary notices. The LHA shall consult with the Hearing Officer and shall schedule hearings at times convenient for him or her.