

Tenant Grievance Policy Administered by the Brockton Housing Authority

A. GENERAL

It is the policy of the Brockton Housing Authority ("BHA") to provide tenants with a method for dispute resolution and the opportunity for a grievance hearing. Tenants in federal or state public housing and participants in the Massachusetts Rental Voucher Program ("MVRP") and Alternative Housing Voucher Program ("AHVP") have the right to request a grievance hearing. "Tenant" means the head of household.

B. POLICY APPLICATION

This grievance policy applies to a dispute a tenant may have with respect to the BHA's action or failure to act in matters involving that tenant's lease with the BHA or BHA rules that adversely affect the tenant's rights, duties, welfare or status. This policy does not apply to disputes between tenants, class grievances, and is not a forum for initiating or negotiating policy changes between tenants and the BHA Board of Commissioners ("Board"). This policy does not apply to participants of the Section 8 Housing Choice Voucher Program.

The BHA 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.

There is no right to a grievance hearing in cases for nonpayment of rent. [Check with Tom]

1. Federal Public Housing

For tenants living in federal public housing, there is no right to a grievance hearing for termination of lease cases based on:

The amount of rent due to the BHA, unless the tenant pays the BHA an amount equal to the amount of the rent due and payable as of the first of the preceding the month in which the act or failure to act took place. The tenant shall thereafter deposit the same monthly amount until the case is resolved by decision of the grievance panel; or

Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the BHA; or

Any violent or drug-related criminal activity on or off the premises; or

Any criminal activity that resulted in a felony conviction of a household member.

2. State-Aided Public Housing

For tenants in state-aided public housing, there is no right to a grievance hearing for termination of lease cases pursuant to M.G.L. c. 121B 32, which includes the following actions by a tenant, household member, or guest:

Unlawfully causing serious physical harm to another tenant or BHA employee, or any person lawfully on the premises of the BHA; or

Threatening to seriously physically harm another tenant or BHA employee, or any person lawfully on the premises of the BHA; or

Destroying, vandalizing or stealing property of a tenant or the BHA or any person lawfully on the premises of the BHA which thereby creates or maintains a serious threat to the health or safety of a tenant or employee of the BHA or any person lawfully on the premises of the BHA; or

On or adjacent to BHA property, possessing, carrying, or illegally keeping a weapon in violation of M.G.L. c. 269 10 or possessing or using an explosive or incendiary device or violating any other provision of M.G.L. c. 266 101, 102, 102A, or 102B; or

On or adjacent to BHA property, unlawfully possessing, selling, or possessing with intent to distribute controlled substance as defined in classes A, B, or C of M.G.L. c. 94C 31C; or

Engaging in other criminal conduct which seriously threatens or endangers the health or safety of another tenant, an employee of the BHA or any other person lawfully on the premises of the BHA; or

Violating any of the reasons set forth in M.G.L. c. 139 19

C. FILING A GRIEVANCE

A tenant shall submit a written request for a grievance in writing and deliver or mail it to the BHA's main office at 45 Goddard Road or to the management office, within seven (7) days after the tenant's receipt of a notice of lease termination or notice of program termination to a participant in the MRVP or AHVP. The request for a grievance hearing must specify the reasons for the grievance and the action that the tenant wants the BHA to take or refrain from taking. (Forms are available at the BHA management offices. Question for Tom: do you need forms or do you already have them in place?)

A request for a grievance hearing regarding some other matter shall be submitted in the same manner as above, but within 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.

The BHA shall permit additional time for initiation of a grievance if the BHA 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 BHA.

D. INFORMAL SETTLEMENT

After the filing of a request for a grievance hearing, the BHA shall provide the grievant with the opportunity to discuss the grievance informally to attempt to settle the grievance without the necessity of a grievance hearing. The BHA 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 the conference occurred at the time of filing. The BHA shall prepare a written summary of the settlement conference including the names of the participants, the date of the conference, and the nature of the informal settlement or proposed disposition. The tenant and the BHA shall preferably sign the summary. The BHA shall maintain a copy of the informal settlement. If a matter 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.

E. THE GRIEVANCE PANEL

1. Composition

The grievance panel ("panel") shall consist of five members - two tenants, chosen by the local tenant organizations ("LTOs"), two BHA representatives, chosen by the BHA's Executive Director, and one impartial person, chosen jointly by the BHA and the tenant member. Alternates are also to be chosen in the same manner and shall serve when the regular members cannot serve. The impartial member (including the alternate member) shall not be a board member of the BHA or an officer of an LTO.

The BHA shall consult the LTOs before BHA appointment of each panel member. Any comments or recommendations submitted by the tenant organizations shall be considered by the BHA before the appointment.

The BHA shall provide written notice of appointment to the panel to each member, including alternates, specifying the term of service, which shall not exceed seven years. Each member shall mail or deliver his or her written acceptance to the BHA on a form provided by the BHA. Each member (including each alternate member) shall annually certify to the BHA that he or she is ready, willing and able to serve; failure to certify within ten (10) days of receipt of a written request by the BHA shall render the member's position vacant. Upon a vacancy, however created, a new member shall be appointed in the same manner as the member who created the vacancy was appointed.

2. Designation of a Presiding Member

A majority of the members (including alternate members) shall designate one member to be the Presiding Member, to preside at the grievance hearings. The BHA shall provide written notice of the Presiding Member's designation to the LTOs along with a list of the other panel members. A majority of the members may designate in writing a different Presiding Member at any time.

3. Quorum

Reasonable efforts shall be made to have the five-member panel hear and decide each grievance. However, three members shall constitute a quorum and may render a decision. If a member removes himself or herself or is removed after a hearing has been held on a grievance, the remaining three members may render a decision on the grievance.

4. Impartiality of Members

The members shall not have or appear to have any direct personal or financial interest in the outcome of a grievance. No member 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 members may determine matters that directly concern his or her own housing or a family member's housing.

Each member shall determine each grievance impartially and objectively. A member, who is or appears to be unable to consider a grievance impartially or objectively, has a duty to remove himself or herself from the panel. If a member fails to do so, upon written objection by the BHA, any affected LTO, or grievant, the Presiding Member may remove a member.

5. Removal of a Member

A member (including an alternate member) may be permanently removed at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias, or partiality. The BHA may remove the member it appointed and the LTOs may remove the member they appointed, after notice to the member and the opportunity for him or her to be heard by the appointing authority. The BHA and the LTOs may jointly remove the impartial member (or alternate) after notice and opportunity to be heard. If the BHA and LTOs fail to agree on removal of the impartial member, the Department of Housing and Community Development ("DHCD") may remove that member for cause upon written request by either the BHA or an LTO. The written request shall contain a detailed specification of charges. DHCD's and the decision whether to remove the impartial member shall be in writing mailed to the member, the BHA and the affected LTOs. Prior to removing a member for cause, DHCD shall give the member, the BHA and all affected LTOs the opportunity to be heard.

F. THE HEARING

1. Hearing Date and Notice

The BHA shall schedule a grievance hearing based on termination of a lease case within fourteen (14) days or as soon as reasonably practical after the BHA's receipt of the request. The BHA shall schedule a grievance hearing regarding some other issue as soon as reasonably convenient after receipt of the request.

The BHA is responsible for scheduling and other administrative matters, including delivering notices. The BHA shall consult the members and schedule hearings at times convenient for them. The BHA 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). The BHA or the panel may reschedule a hearing by agreement, or upon showing by the grievant or the BHA that rescheduling is reasonably necessary.

If the grievant does not request that the hearing be rescheduled and does not appear at the hearing, the grievant has waived the right to a hearing.

2. Pre-Hearing Examination of Relevant Documents

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

3. 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, it shall be open to the public unless the panel otherwise orders. The BHA and the grievant shall be entitled to have a reasonable number of persons present at a grievance hearing. The panel shall decide a challenge to the presence of any such person. The BHA 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 shall be excluded. If the grievant misbehaves at the hearing, the panel may take other appropriate measures to deal with the misbehavior, including dismissing the grievance.

4. Procedure at the Hearing

The panel shall conduct the grievance hearing in a fair manner without undue delay. The hearing shall be tape-recorded. Procedure at the hearing shall be informal, and formal rules of evidence shall not apply. The panel shall initially define the issues. Thereafter, relevant information, including testimony of witnesses and written material, shall be received regarding such issues. The grievant and the BHA shall be entitled to question each other's witnesses. The members may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and BHA policies and procedures. The members may request the BHA 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.

G. THE DECISION

1. Written Decision

After the hearing, the panel must deliberate and by majority vote, determine the decision. This decision must be based upon the evidence presented at the hearing, additional information requested by the members, and upon applicable laws, regulations, and BHA policies and procedures. The decision must be in writing, dated, and state the findings of fact and the reasons

for the decision. Within fourteen (14) days following the hearing, or as soon as reasonably possible, the panel shall provide the BHA with the written decision and the BHA shall then mail or deliver a copy of the decision to the grievant and his or her representative. The BHA shall make a copy of the decision available for public inspection with names and personal identifiers deleted.

2. Review of the Decision

For hearings related to termination of lease cases, there shall be no review by the BHA's Board.

3. State-Aided Public Housing, MRVP & AHVP

For hearings related to issues other than termination of lease cases, the grievant or the BHA may request a review of the decision by the Board if:

The decision of the panel is not supported by the facts; or

The decision does not correctly apply applicable laws, regulations, rules, or policies or procedures; or

The subject matter is not grievable.

The grievant or the BHA must request a review by the Board in writing within 14 days of the date of the written decision. The Board may permit the BHA, the grievant, and the hearing panel to make oral presentations and submit documentation. After the presentation, the Board shall promptly decide whether to uphold, set aside or modify the decision. The Board's decision shall be in writing and explain its reasoning. If a written decision is not rendered within 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.

In the event that the BHA's Board materially changes a decision of the panel, the grievant may request a review of the decision by DHCD. The grievant must submit the request in writing within 14 days of the date of the Board's decision. DHCD shall review the decision of the Board and render a written decision upholding, setting aside or modifying the decision of the Board.

4. Federal Public Housing

For hearings related to issues other than the termination of lease cases, the decision of the panel is binding unless within a reasonable time, the Board determines and notifies the grievant that:

The grievance does not concern BHA action or failure to act regarding the lease or regulations which adversely affect the tenant's rights; or

The decision of the panel is contrary to applicable federal, state or local law, regulations of the Department of Housing and Urban Development ("HUD"), or requirements of the annual contributions contract between HUD and the BHA.

If the Board chooses to review the grievance panel's decision, it may change all or part of the decision. The BHA shall notify the grievant in writing of its decision and the specific reasons for the decision within five working days of the Board meeting.

H. EFFECT OF A DECISION ON A GRIEVANCE

The decision on a grievance shall be binding between the BHA and the grievant with respect to the particular circumstances involved in the grievance, provided that if a court has jurisdiction to determine an matter that has been subject to decision on a grievance, the court's determination on the matter shall supersede the decision on the grievance. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court. As between the BHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.