

MOUNDSVILLE HOUSING AUTHORITY
GRIEVANCE PROCEDURE

Approved 5/1/2018



GRIEVANCE PROCEDURE

RIGHT TO A HEARING

Upon the filing of a written request as provided in these procedures, a Tenant shall be entitled to a hearing before a hearing officer if the grievance procedure is applicable. This Grievance Procedure policy is in accordance with the ACOP and such is made a part hereto by reference.

DEFINITIONS

For the purpose of this Grievance Procedure, the following definitions are applicable:

- (A) "Grievance" shall mean any dispute which a Tenant may have with respect to PHA action or failure to act in accordance with the individual Tenant's lease or PHA regulations which adversely affect the individual Tenant's rights, duties, welfare, or lease status. The foregoing notwithstanding, the PHA reserves the right to deny a grievance hearing and proceed directly with a court hearing in the event that any activity by the Tenant or Tenant's invitees include actions that constitute an immediate threat to the health and safety of the PHA premises or other PHA tenants which may be adversely affected by the activity which constitutes a violation of the Tenant's Lease Agreement.
- (B) "Complainant" shall mean any Tenant whose grievance is presented to the PHA or at the project management office.
- (C) "Elements of due process" shall mean an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:
 - (1) Adequate notice to the Tenant of the grounds for terminating the tenancy and for eviction;
 - (2) Right of the Tenant to be represented by counsel;
 - (3) Opportunity for the Tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have;
 - (4) A decision on the merits.
- (D) "Hearing officer" shall mean a person selected in accordance with these procedures to hear grievances and render a decision with respect thereto.
- (E) *Tenant* shall mean the adult person (or persons) (other than a live-in aide):
 - (1) Who resides in the premises, and who executed the lease with the PHA as lessee of the premises, or, if no such person now resides in the premises,
 - (2) Who resides in the premises, and who is the remaining head of household of the Tenant family residing in the premises.
- (F) **Promptly** shall mean within ten calendar days from the date of mailing of the adverse action or grievable complaint.

APPLICABILITY

- (A) The PHA grievance procedure shall be applicable to all individual grievances as defined between the tenant and the PHA.
- (B) The PHA grievance procedure shall not be applicable to disputes between tenants not involving the PHA or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the PHA's Board of Commissioners.
- (C) The PHA excludes from this grievance procedure any grievance concerning a termination of tenancy or eviction that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA; any violent or drug-related criminal activity on or off such premises; or any criminal activity that results in a felony conviction of a household member.

- (D) This PHA is in a due process state and therefore this PHA may elect to elevate an eviction or matter before a court with jurisdiction.

PROCEDURES PRIOR TO A HEARING

Informal settlement of grievance. Any grievance not related to eviction, termination, or non-renewal of the lease, shall be promptly and personally presented, either orally or in writing, to the PHA office or to the office of the project in which the Tenant resides so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within five business days and one copy shall be given to the Tenant and one retained in the PHA'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 hearing under these procedures may be obtained if the Tenant is not satisfied.

The purpose of this informal settlement of grievance is to allow the Tenant and management to informally discuss an issue without the need for third parties, including witnesses or representatives to be involved. At any time that a third party, including a witness or representative becomes or should become involved in the process, the informal settlement conference shall become a "hearing" and the procedures found hereof shall apply. The housing authority shall notify the Tenant of the date and time that the hearing will take place.

PROCEDURES TO OBTAIN A HEARING

- (A) *Request for hearing.* In the event that the Tenant is not satisfied with the informal settlement of grievance, or the grievance is in response to a notice of eviction, termination or nonrenewal of the lease, the Tenant shall submit a written request for a hearing to the PHA or the project office within ten (10) calendar days from date of mailing of the summary of discussion or the date of the eviction/termination notice. The written request shall specify:
- (1) The reasons for the grievance; and
 - (2) The action or relief sought.
- (B) *Selection of Hearing Officer.* A grievance hearing shall be conducted by an impartial person appointed by the PHA other than a person who made or approved the PHA action under review or a subordinate of such person.
- (C) *Failure to request a hearing.* If the Tenant does not request a hearing in accordance with this Section, then the PHA'S disposition of the grievance shall become final: *Provided* that failure to request a hearing shall not constitute a waiver by the Tenant of the right thereafter to contest the PHA'S action in disposing of the complaint in an appropriate judicial proceeding.
- (D) *Hearing prerequisite.* All grievances shall be promptly presented in person, either orally or in writing pursuant to the informal procedure prescribed as a condition precedent to a hearing under this section: *Provided*, that if the Tenant shall show good cause why there was failure to proceed to the hearing officer, the provisions of this Subsection may be waived by the hearing officer.
- (E) *Escrow deposit.* If local practice permits an escrow deposit, then, before a hearing is scheduled in any grievance involving the amount of rent as defined in the lease which the PHA claims is due, the Tenant shall pay to the PHA an amount equal to the amount of the rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. The Tenant shall thereafter deposit monthly the same amount of the monthly rent in an escrow account held by the PHA until the complaint is resolved by decision of the hearing officer. Amounts deposited into the escrow shall not be considered as acceptance of money for rent during the period in which the grievance is pending. These requirements may be waived by the PHA in extenuating circumstances. Unless so waived, the failure to make such payments shall result in a termination of the grievance procedure: *Provided* that failure to make payment shall not constitute a waiver of any right the Tenant may have to contest the PHA'S disposition of his grievance in any appropriate judicial proceeding.

HOWEVER, tenants may request and the PHA must waive the requirement for an escrow deposit when a tenant does not agree with the PHA's determination of the tenant's imputed welfare income and requests a grievance hearing. LIKEWISE, if a tenant has requested a hardship and has requested a grievance hearing to review the

PHA's determination denying or limiting the request, the tenant is not required to pay any escrow deposit to obtain a grievance hearing.

- (F) *Scheduling of hearings.* Upon the Tenant's compliance with this Section, or upon the housing authority notifying the tenant or his/her representative that a hearing will be held, a hearing shall be promptly scheduled by the hearing officer for a time and place reasonably convenient to both the Tenant and the PHA. A written notification specifying the date, time, place and the procedures governing the hearing shall be delivered to the Tenant and the appropriate PHA official.
- (G) *Effect of Hearing on Termination/Eviction Notices.* Tenancy shall not terminate (even if required notice period has expired) until the time for the Tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the Tenant) the grievance process has been completed.

PROCEDURES GOVERNING THE HEARING

- (A) The Tenant shall be afforded a fair hearing, which shall include:
 - (1) The opportunity to examine before the grievance hearing any PHA documents, including records and regulations that are directly relevant to the hearing. The Tenant shall be provided a copy of any such document at the Tenant's expense. If the PHA does not make the document available for examination upon request by the Tenant, the PHA may not rely on such document at the grievance hearing.
 - (2) The right to be represented by counsel or other person chosen as the Tenant's representative and to have such person make statements on the Tenant's behalf;
 - (3) The right to a private hearing unless the Tenant requests a public hearing;
 - (4) The right to present evidence and arguments in support of the Tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies; and
 - (5) A decision based solely and exclusively upon the facts presented at the hearing.
- (B) *Accommodation of persons with disabilities.*
 - (1) The PHA 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.
 - (2) If the Tenant is visually impaired, any notice to the Tenant which is required by these procedures must be in an accessible format.
- (C) At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.
- (D) The hearing officer may render a decision without proceeding with the hearing if the hearing officer determines that the issue has been previously decided in another proceeding.
- (E) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer may decide to postpone the hearing for not to exceed five workdays or may decide that the party has waived his/her right to a hearing. Both the complainant and the PHA shall be notified of the determination by the hearing officer. Provided, that the determination that the complainant has waived his/her right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA disposition of the grievance in an appropriate judicial proceeding.
- (F) The hearing shall be conducted informally by the hearing officer and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer shall require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the

directions of the hearing officer to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

- (G) The complainant or the PHA 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 such transcript.

DECISION OF THE HEARING OFFICER

- (A) The hearing officer shall prepare a written decision, together with the reasons therefor, within a reasonable time (not to exceed 10 calendar days) after the hearing. A copy of the decision shall be sent to the Tenant and the Landlord. The PHA shall retain a copy of the decision in the Tenant's folder. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the PHA and made available for inspection by a prospective complainant, his representative, or the hearing officer.
- (B) The decision of the hearing officer shall be binding on the PHA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the PHA's Board of Commissioners determines within a reasonable time, and promptly notifies the complainant of its determination, that:
 - (1) The grievance does not concern PHA action or failure to act in accordance with or involving the Tenant's lease or PHA regulations, which adversely affect the Tenant's rights, duties, welfare or status;
 - (2) The decision of the hearing officer is contrary to applicable Federal, State or local law, PHA regulations or requirements of the Annual Contributions Contract between PHA and the U.S. Department of Housing and Urban Development.
- (C) A decision by the hearing officer or Board of Commissioners in favor of the PHA or which denies the relief requested by the Tenant in whole or in part shall not constitute a waiver of, nor affect in any manner whatsoever, any rights the Tenant may have to a trial *de novo* or judicial review in any judicial proceedings, which may thereafter be brought in the matter.