

GRIEVANCE PROCEDURE
NEWTON HOUSING AUTHORITY
STATE HOUSING PROGRAMS

I. RIGHT TO A HEARING

A. Who has the right to a hearing?

1. Any Tenant who receives notice from the Newton Housing Authority (NHA) of Lease termination may request a grievance hearing regarding whether good cause exists for terminating the lease except when the notice of termination is based upon any of the following reasons:

- a. Non-payment of rent;
- b. Unlawfully causing serious physical harm to another tenant, an employee of NHA or any other person lawfully on NHA property;
- c. Unlawfully threatening to cause serious harm to any member of a tenant household, NHA employee or any other person lawfully on NHA property;
- d. Unlawfully destroying, vandalizing or stealing property of any member of a tenant household, the NHA or any other person lawfully on NHA property, if such conduct involves a serious threat to the health or safety of any such person;
- e. Unlawfully possession, carrying or keeping a weapon on or adjacent to NHA property in violation of M.G.L., Chapter 269, Section 10.
- f. Unlawfully possession or using an explosive or incendiary device on or adjacent to NHA property or otherwise violating M.G.L., Chapter 266, Section 101, 102, 102A or 102B;
- g. Unlawfully possession, selling or possessing with intent to distribute a Class A, B or C controlled substance as defined by M.G.L., Chapter 94C, Section 31 on or adjacent to NHA property;
- h. Engaging in other criminal conduct, which seriously threatens or endangers the health or safety of any member of a tenant household, NHA employee or any other person lawfully on NHA property;
- i. Engaging in behavior which would be cause for voiding the lease pursuant to M.G.L., Chapter 139, Section 19 which includes but is not limited to using the leased premises for prostitution, assignation, lewdness, gambling, illegal keeping and/or sales of alcoholic beverages, the service of alcohol to people who are habitually intoxicated or to people who the tenant knows are likely to operate a motor vehicle while under the influence of alcoholic beverages, the illegal keeping, sales or manufacture of controlled substances, the illegal keeping of weapons, and the possession or use of explosive or incendiary devices.
- j. In the event the NHA has reason to believe that a guest of tenant or a guest of a household member has engaged in any of the behavior listed herein above and that the tenant knew beforehand or should have known beforehand that there was a reasonable possibility that the guest would engage in misconduct.

2. Any tenant participating in the Alternative Housing Voucher Program or in the Massachusetts Rental Voucher Program receiving notice of the intention of the NHA to terminate participation in the Program.

3. Any tenant who feels aggrieved about any action or failure to act by the NHA in accordance with their lease or any statute, regulation, policy or procedure that affects the tenants status, rights, duties or welfare or any tenant who has a complaint regarding an NHA employee.

B. How does the tenant obtain or begin the hearing process?

1. If the tenant has received notice of termination of their lease a hearing as to whether or not there is a good cause for termination must be requested by the tenant in writing and must be mailed or delivered to the NHA at the main office of the NHA within seven (7) days after notice of lease termination has been served upon the tenant by the NHA or its agent.

2. If the tenant has received notice of termination by the NHA of its participation in the Alternative Housing Voucher Program or the Massachusetts Rental Voucher Program a hearing as to whether or not said Program or Programs must be requested by the tenant in writing and must be mailed or delivered to the NHA within seven (7) days after notice of Program termination has been served upon the tenant by the NHA or its agent.

3. Any tenant wishing a grievance hearing on any other matter subject to this grievance procedure must initiate the procedure by giving notice, in writing, to the NHA which notice must be mailed or delivered to the NHA at its main office no more than fourteen (14) days after the date on which the tenant first became aware or should have become aware of the subject matter of the grievance.

4. The NHA shall have the discretion to permit a grievance under this section to be initiated late if it finds good cause for the late request and that the NHA has not been prejudiced by the late request.

II. HEARING PROCESS.

A. Informal Settlement Conference.

1. Promptly after a grievance hearing is requested, the NHA shall give the tenant an opportunity to discuss the grievance informally in an attempt to settle the matter without the necessity of a grievance hearing.

2. The NHA shall give the tenant reasonable advance notice of a time and

place for the informal settlement conference unless an informal settlement conference took place prior to the NHA's receipt of the request for a grievance hearing.

3. If the matter is not resolved at the Informal Conference, the tenant shall have the right, at his or her discretion, to have a formal hearing before the Executive Director of the Newton Housing Authority

B. The Formal Conference.

1. When is the Formal Conference to be scheduled?

a. If the tenant has requested a Formal Conference as the result of receiving notice of termination of the tenants lease, the Conference shall be scheduled within fourteen (14) day, or as soon as reasonably practical thereafter, after the date on which the NHA received the request for a Formal Conference.

b. If the tenant has requested a Formal Conference in regard to any issue other than receipt of notice of termination of tenancy, the Conference shall be scheduled as soon as reasonably possible and convenient following receipt of the request.

c. If the matter is not resolved to the satisfaction of the tenant at the Formal Conference, a Grievance Hearing shall be held. The failure of a tenant to appear at a Formal Conference does not affect the tenant's right to a Grievance Hearing.

C. The Grievance Hearing.

1. When is the Grievance Hearing to be scheduled?

a. If the tenant has requested a Grievance Hearing as the result of receiving notice of termination of the tenants lease, the Hearing shall be scheduled within fourteen (14) day, or as soon as reasonably practical thereafter, after the date on which the NHA received the request for a Grievance Hearing.

b. If the tenant has requested a Grievance Hearing in regard to any issue other than receipt of notice of termination of tenancy, the Hearing shall be scheduled as soon as reasonably possible and convenient following receipt of the request.

D. The NHA shall give reasonable advance written notice of the time and place of the hearing to the Tenant and the Tenant's representative (if any). The NHA and the hearing officer or hearing panel may reschedule a hearing by agreement or upon a showing by the tenant of the NHA that rescheduling is reasonably necessary.

E. Prior to the Grievance Hearing, the NHA shall give to the Tenant or the Tenant's representative a reasonable opportunity to examine NHA documents which are directly relevant to the Grievance. Following a timely request, the NHA shall provide copies of such documents to the Tenant and, for good cause (including financial hardship), may waive the

charge for the copies.

F. 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 panel or the hearing officer otherwise orders. The NHA 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 panel or the hearing officer. At the hearing the NHA 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 shall be excluded. If the grievant misbehaves at the hearing, the hearing panel or hearing officer may take other appropriate measures to deal with the misbehavior, including dismissing the grievance.

G. Procedure at Grievance Hearings.

The hearing panel or the hearing officer shall conduct the grievance hearing in a fair manner without undue delay. The hearing panel or the hearing officer shall initially take appropriate steps to define the issues. Thereafter, relevant information, including testimony of witness and written material, shall be received regarding such issues. Both the grievant and the NHA 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 members of the hearing panel or the hearing officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and NHA rules and policies. The panel members or the hearing officer may request the NHA 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.

H. Written Decision; Effect of Decision.

Within fourteen (14) days following the hearing or as soon thereafter as reasonably possible the hearing panel or the hearing officer shall provide the NHA with a written decision of 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 evidence at the grievance hearing and such additional as may have been requested by the panel members or the hearing officer. The NHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative. A copy of the decision (with names and personal identifiers deleted) shall thereafter be maintained at the NHA and shall be open to public inspection.

I. Review by the NHA's Board.

In case where the decision concerns whether good cause exists for termination of a lease, there shall be no review by the NHA's Board. In other cases, in the event that the grievant or the NHA believes that (i) the decision of the hearing panel or hearing officer is not supported by the facts; (ii) the decision does not correctly apply applicable laws, regulations, rules and/or policies; or (iii) the subject matter is not grievable, within fourteen (14) days of mailing or other delivery of the decision, the grievant or the NHA may request review of the decision by the NHA's Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the NHA and the grievant to make oral presentations and submit documentation. The Board may also permit the hearing officer or hearing panel to make a presentation. 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.

J. Review by the Department.

In the event that the NHA's Board shall make a material change in a decision of the hearing panel or hearing officer, upon written request of the grievant made within fourteen (14) days of mailing or other delivery of the decision, the Department shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board.

K. Effect of a Decision on a Grievance.

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. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court. As between the NHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.

III. HEARING OFFICER

1. Appointment of Hearing Officers and Jurisdiction.

This grievance procedure adopted by the Newton Housing Authority (NHA) requires a hearing and determination of a matter subject to the procedure 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 in the city or town

and participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the NHA, except for those persons who are subject to a different grievance procedure.

Under this procedure the NHA 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 reliable written determinations of matters at issue. The NHA shall submit its written nomination(s) for hearing officer(s) to each affected 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 days of receipt of a nomination any affected LTO may make a written request to the NHA to interview the nominee, following such a request for an interview by an affected LTO, the NHA shall make prompt arrangements for an interview between the nominee and the LTO(s) which made the request. Within thirty days after the receipt of a nomination or within five days after its interview of a nominee, whichever is later, any affected LTO may approve or disapprove the nominee by giving written notice to the NHA. A notice of disapproval shall include the specific reason(s) why the LTO disapproved the nominee. If all affected LTO(s) shall approve a nominee or if no affected LTO shall disapprove a nominee within the requisite time, the nominee shall thereupon become a hearing officer upon written acceptance mailed or delivered to the NHA, which shall notify the LTO(s).

Each hearing officer shall annually certify to the NHA 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 NHA shall render the hearing officer's position vacant.

2. Impartiality of the Hearing Officer.

A hearing officer or a member of his or her family shall not have and shall not 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 NHA and the affected 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, the

Department may remove a hearing officer for cause upon a request by the NHA or the LTO. Prior to removing a hearing officer, the Department shall require a detailed written specification of the reason(s) for removal, the Department shall deny a request for removal without a hearing.

4. Appointments of Interim Hearing Officers.

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 section (1) of this grievance procedure would likely cause significant delay with potential adverse consequences to either the NHA or the grievant, the NHA with notice to the affected LTO(s) may request that an interim hearing officer be named by the Department. Such a request shall be in writing and shall specify the reason for the request. The affected LTO(s) shall be given a reasonable opportunity to comment on the request. If the Department finds there to be a reasonable need for an interim officer, the Department shall name an interim hearing officer. The Department may name a previously disapproved nominee to serve as interim hearing officer if it finds that the 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 NHA to be hearing officer in the manner set out herein.

5. Scheduling.

The NHA shall be responsible for scheduling and other administrative matters, including all necessary notices.

6. Procedural Provisions.

The provisions of 760 CMR 6.08 (4) are incorporated by reference into this grievance procedure. These provisions include: (a) the provisions regarding the time and method for initiating a grievance; (b) the requirement of a pre-hearing informal settlement conference between grievant and the NHA about the grievance; (c) the provisions regarding the NHA's setting a hearing date and giving notice to grievant; (d) the grievant's right to inspect relevant documents and to secure copies before the grievance hearing; (e) the provisions regarding who may be present at the grievance hearing; (f) the procedural requirements for the conduct of grievance hearings; and (g) the requirements regarding a written decision following the grievance hearing.