

TENANT GRIEVANCE PROCEEDURE FOR STATE HOUSING

PART A

1. GENERAL OVERVIEW

- A. Department of Housing and Community Development (DHCD) regulations (760 CMR 6.08) require the Rockport Housing Authority (RHA) to have a grievance procedure the purpose of which shall be the prompt and reliable determination of grievances. The procedure must be available to state-aided public housing tenants, 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 the RHA or an RHA 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 or household member; (2) An allegation that the RHA or an RHA employee has acted or failed to act in accordance with any statute, regulation, or rule regarding the program and 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 other tenant or household member, in which the RHA 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 termination a lease shall be initiated by a tenant, in writing, and shall be mailed (postmarked) or delivered to the RHA at it's main office within seven (7) days after a notice of lease termination has been given to the tenant by the RHA.
- B. A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed (postmarked) or delivered to the RHA at its main office no more than seven (7) days after the date on which the grievant first became aware of the subject matter of the grievance.
- C. In the event that a tenant files a grievance as to the amount of a redetermined rent within fourteen (14) days of the RHA's notice of the redetermined rent, the tenant shall continue to pay the rent then in effect (unless the redetermined rent is lower) until the final disposition of their grievance. Upon final disposition of the grievance, the tenants 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 RHA will credit the tenant with any amounts paid but determined not to have been due.
- D. The RHA shall permit additional time for initiation of a grievance if the RHA shall find that there was a good reason for late initiation of the grievance and that the late initiation of the grievance and that the late initiation would not cause prejudice to the RHA.

3. INFORMAL SETTLEMENT CONFERENCE

Promptly after the initiation of a grievance, unless otherwise provided, the RHA's Executive Director or his/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 RHA shall give reasonable advanced notice to the grievant and to his/her representative (if any) of a time and place of an informal settlement conference, unless such a conference shall have taken place when the grievance was delivered to the RHA. At the informal settlement conference, the RHA 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 RHA and grievant shall acknowledge the terms of the resolution in writing. If the grievance is not resolved at the informal settlement 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

Upon filing of a written request as provided herein, a complainant shall be entitled to a hearing before the grievance officer, except that the RHA excludes from the grievance procedure any action concerning an eviction or termination of tenancy based upon the tenant creating maintenance problems, a threat to the health and safety of other tenants or RHA employees.

No grievance hearing shall be requested or held under any of the circumstances specified as in M.G.L.c.121B, sec.32, including but not limited to the following:

1. In the event of nonpayment of rent;
2. In the event the RHA has reason to believe that tenant, a household member or guest:
 - a. Has unlawfully caused serious physical harm to another tenant or an employee of the RHA or any other person lawfully on RHA property;
 - b. Has unlawfully threatened to cause serious physical harm to any member of a tenant's household or any RHA employee or any person lawfully on RHA property
 - c. Has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or of the RHA, or of any person lawfully on the RHA'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 RHA's property in violation of M.G.L. c. 269 sec. 10;
 - e. Has unlawfully possessed or used an explosive or incendiary device on or adjacent to The RHA's property or has otherwise violated M.G.L. c. 266 subsection 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 M.G.L. c.94C sec. 31, on or adjacent to the RHA'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 RHA employee, or any person lawfully on the RHA's property; or
 - h. Has engaged in behavior which would be cause for voiding the lease; or
3. In the event the RHA 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 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.

5. HEARING DATE AND NOTICE OF HEARING

- A. The RHA shall schedule a grievance hearing of whether good cause exists for terminating a lease within fourteen (14) days after the date on which the RHA receives the grievance. At such time the RHA 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 RHA shall give the 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 RHA has given written notice to the grievant as to the additional reason(s) not less than three 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 RHA shall not file a summary process summons and complaint seeking an eviction pending the hearing and a decision or other resolution in the RHA'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 RHA shall give reasonable advanced written notice of the time and place of the hearing to the grievant and to his/her representative, if any is known.
- C. The RHA or the hearing officer may reschedule a hearing by agreement of the RHA and the grievant; or upon a showing by the grievant or by the RHA that rescheduling is reasonably necessary.

6. PRE-HEARING EXAMINATION OF RELEVANT DOCUMENTS

Prior to a grievance hearing the RHA shall give the grievant or his/her representative a reasonable opportunity to examine RHA documents which are directly relevant to the grievance. Following a timely request, the RHA 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 otherwise orders. The RHA 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 RHA and the grievant may be represented by a lawyer or by a non-lawyer. Each person present at the hearing shall conduct him/herself in an orderly manner or they may be excluded. If the grievant misbehaves at the hearing, the hearing officer may take 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 materials, shall be received regarding such issues. Both the grievant and the RHA 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 RHA rules and policies. The hearing officer may request the RHA 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 tapes of the hearing shall be maintained by the RHA or council for the RHA until any applicable appeals have been decided. During that time, the grievant or his/her representative may request a time to listen to the tapes at the RHA office.

9. WRITTEN DECISION BY THE GRIEVANCE OFFICER

Within fourteen (14) days following the hearing or as soon thereafter as reasonably possible, the hearing officer shall provide the RHA 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 at the hearing officer's request. The hearing officer shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his/her representative, if any, and to the RHA. A copy of the decision shall be maintained at the RHA.

10. REVIEW BY THE RHA BOARD OF COMMISSIONERS

In cases where the decision concerns whether good cause exists for terminating a lease, there shall be no review by the RHA Board. In other cases, in the event that the grievant or the RHA believes that; a) The decision of the hearing officer is not supported by 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 RHA may request review of the decision by the RHA Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the RHA 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 RHA's Board shall make a material change in the decision of the grievance officer, 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 RHA 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 RHA 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 a decision on a grievance, the court's determination on a matter shall supersede the decision on the grievance. In the event that the hearing officer's decision on a grievance determines that good cause exists for terminating a lease, the RHA may, upon receipt of the decision, file a summary process summons and complaint, and there shall be no review by the Board or by 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 RHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.

PART B

1. **HEARING OFFICER**

All grievance hearings and determinations of a matter subject to this grievance procedure shall be by an appointed hearing officer, except as otherwise provided herein. An alternate shall also be chosen. Notices of the appointment shall be given in writing to both the hearing officer and the alternate and shall specify the term, not to exceed seven (7) years, for which the officer so chosen, shall serve. Each officer and alternate so chosen shall mail or deliver his/her written acceptance to the RHA promptly after being chosen. The RHA shall retain all notices and acceptances in its files. The hearing officer so chosen shall serve all tenants of state aided public housing administered by the RHA.

Each chosen officer and alternate shall annually certify to the RHA in writing that he/she is ready, willing and able to serve; failure to certify within ten (10) days receipt of a written request by the RHA shall render the position vacant. Upon a vacancy, however created, a new officer shall be appointed in the same manner that a previous officer was appointed. The RHA shall maintain all such certifications in its files.

2. **IMPARTIALITY OF MEMBERS**

No hearing officer who is to determine a particular matter, shall have or shall appear to have any direct personal or financial interest in the outcome. No hearing officer who is to determine a particular matter, 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 officer may determine matters which directly concern his/her own housing or the housing of a family member or his/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. Any hearing officer who shall be or shall appear to be unable to determine any particular matter impartially or objectively on the basis of the evidence and applicable law, shall remove him/herself as a hearing officer, and should notify the RHA of the need to call in the alternate for this particular hearing. Any hearing officer, who shall willfully obstruct prompt and reliable determination of any matter presented before them, shall be removed by the RHA upon such an objection.

3. **REMOVAL OF A HEARING OFFICER**

A hearing officer (or alternate) may be permanently removed as an officer at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias, or partiality. The RHA may remove the officer after notice to the officer and the opportunity for him/her to be heard. DHCD may remove the officer for cause upon written request by the RHA. The written request to DHCD must contain detailed specification of charges. DHCD's decision whether to remove an officer shall be sent in writing to the officer and the RHA. Prior to removing the officer for cause, DHCD shall give the officer and the RHA the opportunity to be heard.

4. **SCHEDULING**

The RHA shall be responsible for scheduling and other administrative matters, including all necessary notices. The RHA shall consult with the hearing officer insofar as reasonably possible shall schedule the hearing at time/times convenient for him/her or for his/her alternate.