

TAUNTON HOUSING AUTHORITY

30 OLNEY STREET

TAUNTON, MASSACHUSETTS 02780

FEDERAL TENANT GRIEVANCE PROCEDURE

1. APPLICABILITY

The Taunton Housing Authority will hereinafter be referred to as the THA.

- (a) The THA grievance procedure shall be applicable to all individual grievances as defined below between the tenant and the THA provided, that in those jurisdictions which require that, prior to eviction, a tenant be given a hearing in court containing the elements of due process as defined below, the THA may exclude from its procedure any grievance concerning any eviction or termination of tenancy based upon a tenant's creation or maintenance of a threat to the health or safety of other tenants or THA employees.
- (b) The THA grievance procedure shall not be applicable to disputes between tenants not involving the THA 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 THA's Board of Commissioners.

2. DEFINITIONS

- (a) "Grievance" shall mean any dispute which a tenant may have with respect to THA action or failure to act in accordance with the individual tenant's lease or THA regulations which adversely affect the individual tenant's rights, duties, welfare or status.
- (b) "Complaint" shall mean any tenant whose grievance is presented to the THA or at the project management office in accordance with paragraph 3 and 4a.
- (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. Opportunity for the tenant to examine all relevant documents, records and regulations of the THA prior to the trial for the purpose of preparing a defense;
 3. Right of the tenant to be represented by counsel;
 4. Opportunity for the tenant to refute the evidence presented by the THA including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;
 5. A decision on the merits.
- (d) "Hearing Officer" shall mean a person selected in accordance with Paragraph 4 of this subpart to hear grievances and render a decision with respect thereto.
- (e) "Hearing Panel" shall mean a panel selected in accordance with respect thereto.
- (f) "Tenant" shall mean any lessee or the remaining head of the household of any tenant family residing in housing accommodations covered by this part.

3. INFORMAL SETTLEMENT OF GRIEVANCE

Any grievance shall be personally presented, either orally or in writing, to the THA office or to the office of the project of which the complainant resides so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within 10 calendar days and one copy shall be given to the tenant and one retained in the THA tenant file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of complaint and the specific reasons therefore, and shall specify the procedure by which a hearing under Paragraph 4 may be obtained if the complaint is not satisfied.

4. PROCEDURE TO OBTAIN A HEARING

- (a) Request for Hearing- The complainant shall submit a written request for a hearing to the THA or to the project office within 5 days after receipt of the summary of discussion pursuant to Paragraph 3. The written request shall specify:
1. The reasons for the grievance; and
 2. The action of relief sought.
- (b) Selection of Hearing Officer or Hearing Panel- Grievance shall be presented before a hearing panel. A hearing panel shall be selected as follows:

1. The hearing officer shall be an impartial, disinterested person selected jointly by the THA and the complainant. If the THA and the complainant cannot agree on a hearing officer, they shall each appoint a member of a hearing panel and the member so appointed shall select a third member. If the members appointed by the THA and the complainant cannot agree on a third member, such member shall be appointed by any other third party agreed upon by the THA and the complainant.
- (c) Failure to Request a Hearing- If the complainant does not request a hearing in accordance with this paragraph, then the THA's disposition of failure to request a hearing shall not constitute a waiver by the complainant of his right thereafter to contest the THA's action in disposing of the complaint in an appropriate judicial proceeding.
 - (d) Hearing Prerequisite- All grievances shall be personally presented either orally or in writing pursuant to the informal procedure prescribed in Paragraph 3 as a condition precedent to a hearing under this section, provided that if the complainant shall show good cause why he/she failed to proceed in accordance with Paragraph 3 to the hearing officer or hearing panel, the provisions of this subsection may be waived by the hearing officer or hearing panel.
 - (e) Escrow Deposit- Before a hearing is scheduled in any grievance involving the amount of rent as determined by the THA under existing regulations which the THA claims is due, the complainant shall pay the THA an amount of 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 complainant shall thereafter deposit the same amount of the monthly rent in an escrow account monthly until the complaint is resolved by decision of the hearing officer or hearing panel. These requirements may be waived by the THA in extenuating circumstances. Unless by waiver, the failure to make such payments shall result in a termination of the grievance procedure, provided, that failure to make payment shall not a waiver of any right the complainant may have to contest the THA's disposition of his grievance in any appropriate judicial proceeding.
 - (f) Scheduling of Hearings- Upon complainant's compliance with paragraphs (a), (d), and (e) of Paragraph 4 of this document, a hearing shall be scheduled by the hearing officer or hearing panel promptly for a time and place reasonably convenient for both the complainant and the THA. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the complainant and the appropriate THA official.

5. PROCEDURES GOVERNING THE HEARING

- (a) The hearing shall be held before a hearing officer or hearing panel, as appropriate.
- (b) The complainant shall be afforded a fair hearing providing the basic safeguards of due process which shall include the following have been taken:
 1. The opportunity to examine before the hearing and at the expense of the complainant, to copy all documents, records and regulations of the THA that are relevant to the hearing. Any documents not so made available after request therefore by the complainant may not be relied on by the THA at the hearing;
 2. The right to be represented by council or other person chosen as his or her representative;
 3. The right to a private hearing unless the complainant requests a public hearing;
 4. The right to present evidence and arguments in support of his or her complaint, to controvert evidence relied on by the THA or project management and to confront and cross examine all witnesses on whose testimony or information the THA or project management relies; and
 5. A decision based solely and exclusively upon the facts presented at the hearing.
- (c) The hearing officer or hearing panel determines that the issue has been previously decided in another proceeding.
- (d) If the complainant or the THA fails to appear at the scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five more business days or may make a determination that the complainant has waived his right to a hearing. Both the complainant and the THA shall be notified of the determination by the hearing officer or hearing panel, provided that the determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest the THA's disposition of the grievance in an appropriate judicial proceeding.
- (e) At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the THA must sustain the burden of justifying the THA action or failure to act against which the complaint is directed.
- (f) The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the complainant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel

shall require the THA, 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 or hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party in granting or denial of the relief sought, as appropriate.

- (g) The complainant or the THA may arrange, in advance and at the expense of the party making the arrangement, for transcript of the hearing. Any interested party may purchase a copy of such transcript.

6. DECISION OF THE HEARING OFFICER OR HEARING PANEL

- (a) The hearing officer or hearing panel shall prepare a written decision.

Together with the reasons therefore, within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the THA. The THA shall retain a copy of the decision in the tenant's folder. A copy of such decision, with all names and identifying reference deleted, shall also be maintained on file by the THA and made available for inspection by a prospective complainant, his representative, or a hearing panel or hearing officer.

- (b) The decision of the hearing officer or hearing panel shall be binding on the THA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the THA Board of Commissioners determines within a reasonable time and promptly notified the complainant of its determination that:

1. The grievance does not concern THA action or failure to act in accordance with or involving the complainants lease or THA regulations.
2. The decision of the hearing officer or hearing panel is contrary to applicable Federal, State, or local law, HUD regulations or requirements to annual contributions contract between HUD and the THA.

- (c) A decision by the hearing officer, hearing panel, or Board of Commissioners in favor of the THA or which denies the relief requested by the complainant in whole or part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a

trial de novo or judicial review in any judicial proceedings, which may thereafter be brought into the matter.

7. THA EVICTION ACTIONS

If a tenant has requested a hearing in accordance with Paragraph 4 on a complaint involving a THA notice of termination of the tenancy and the hearing officer or hearing panel upholds the THA's action to terminate the tenancy, the THA shall not commence an eviction action in a state or local court until it has served a notice to vacate on the tenant, and in no event shall the notice to vacate be issued prior to the decision of the hearing officer or the hearing panel having been mailed or delivered to the complainant. Such notice to vacate must be in writing and specify that if the tenant fails to quit the premises within the applicable statutory period, or on the termination date stated in the notice of termination, whichever is later, appropriate action will be brought against him/ her and he/ she may be required to pay court costs and attorney fees.

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