

## **HOUSING AUTHORITY OF MADISONVILLE GRIEVANCE PROCEDURE**

### **1. RIGHT TO A HEARING.**

Upon filing of a written request as provided herein, a complainant shall be entitled to a hearing before the Hearing Officer.

### **2. DEFINITIONS.**

A. "Grievance" shall mean any dispute which a resident may have with respect to the Housing Authority of Madisonville's (MHA) action or failure to act in accordance with the individual resident's lease or Authority regulations which adversely affect the individual resident's rights, duties, welfare or status. Grievance *does not* include any dispute a resident may have with the Authority concerning a termination of tenancy or eviction that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the Authority's public housing premises by other residents or employees of the Authority, or any violent or drug-related criminal activity on or off such premises; or any activity resulting in a felony conviction. Nor shall the process apply to disputes between residents not involving the MHA or to class grievances.

B. "Complainant" shall mean any tenant whose grievance is presented to the MHA or at the project management office in accordance with Paragraph 3 and Paragraph 4(a).

C. "Elements of due process" shall mean an eviction action or a termination/non-renewal 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/non-renewing the tenancy and for eviction;
2. Opportunity for the tenant to examine all relevant documents, records and regulations of the MHA prior to the hearing 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 MHA 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 to hear grievances and render a decision with respect thereto.

E. "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 MHA office so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within a reasonable time and one copy shall be given to the tenant and one retained in the MHA'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 specific reasons therefore, and shall specify the procedures by which a hearing under Paragraph 4 may be obtained if the complainant 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 MHA office within FIVE (5) business days after receipt of the summary of discussion pursuant to Paragraph 3. The written request shall specify:

1. The factual basis for the grievance; and
2. The action of relief sought.

#### **B. Selection of Hearing Officer.**

1. A grievance hearing shall be conducted by an impartial person appointed by the MHA, other than a person who made or approved the MHA action under review or a subordinate of such person.
2. The Executive Director will select the Hearing Officer or serve as the Hearing Officer. In the absence of the Executive Director, the selection shall be made by the Chairperson of the Board or the designee of the Chairperson.
3. If there be any resident organization or organizations, the MHA may consult same before the appointment of each hearing officer. Any comments or recommendations submitted by such tenant organization or organizations shall be considered by the appointing authority.

#### **C. Failure to request a hearing.**

If the complainant does not request a hearing in accordance with this paragraph, then the MHA's disposition of the grievance under Paragraph 3 shall become final; however, the failure to request a hearing shall not constitute a waiver by the complainant of his or her right thereafter to contest the MHA'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 or she failed to proceed in accordance with Paragraph 3 to the hearing officer, the provisions of this subsection may be waived by the hearing officer.

#### **E. Escrow Deposit.**

Before a hearing is scheduled in any grievance involving the amount of rent as defined in the Lease Agreement, which the MHA claims is due, the complainant shall pay to the MHA an amount equal to the amount of the rent due and payable as of the first (1st) 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. These requirements may be waived by the MHA 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 complainant may have to contest the MHA's disposition of his grievance in any appropriate judicial procedure.

#### **F. Scheduling of Hearings.**

Upon complainant's compliance with paragraphs A, D, and E of this section, a hearing shall be scheduled by the hearing officer promptly for a time and place reasonably convenient to both the complainant and the MHA. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the complainant and the appropriate MHA official.

## **5. PROCEDURES GOVERNING THE HEARING.**

- A. The hearing shall be held before a hearing officer.
- B. The complainant shall be afforded a fair hearing providing the basic safeguards of due process which shall include:
  1. The opportunity to examine before the hearing and, at the expense of the complainant, to copy all documents, records, and regulations of the PHA 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 PHA at the hearing;
  2. The right to be represented by counsel 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 MHA, and to confront and cross-examine all witnesses on whose testimony or information the MHA relies; and,
  5. A decision based solely and exclusively upon the facts presented at the hearing.
- C. 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.
- D. If the complainant or the MHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for not to exceed five (5) business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the MHA shall be notified of the determination by the hearing officer. Provided, that a 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 MHA'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 MHA must sustain the burden of justifying the MHA action or failure to act against which the complaint is directed.
- 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 MHA, 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 maintain 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 MHA 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.
- H. Accommodation of persons with disabilities.
  1. The MHA and hearing officer shall provide reasonable accommodation for the persons with disabilities to participate in the hearing. Reasonable accommodations 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.

## **6. DECISION OF THE HEARING OFFICER.**

- A. The hearing officer 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 MHA. The MHA shall retain a copy of the decision in the tenant's folder. A copy of such decision, with all names and identifying references redacted, shall also

be maintained on file by the MHA 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 MHA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the MHA Board of Commissioners determines within a reasonable time, and promptly notifies the complainant of its determination, that:

1. The grievance does not concern MHA action or failure to act in accordance with or involving the complainant's lease or MHA regulations, which adversely affect the complainant's rights, duties, welfare or status;

2. The decision by the Hearing Officer is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and MHA.

C. A decision by the Hearing Officer or Board of Commissioners in favor of the MHA or which denies the relief requested by the complainant in whole or in 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 in the matter.

#### **7. MHA EVICTION ACTIONS.**

If a tenant has requested a hearing in accordance with Paragraph 4 in a complaint involving a MHA notice of termination/non-renewal of the tenancy and the hearing officer upholds the MHA's action to terminate/non-renew the tenancy, the MHA 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 office 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 appropriate action will be brought against him and he may be required to pay court costs and attorney fees.

#### **8. APPLICABILITY.**

A. The MHA grievance procedure shall be applicable to all individual grievances as defined in Paragraph 2 (a) between the tenant and the MHA.

B. The MHA grievance procedure shall not apply to disputes between tenants not involving the MHA nor to class grievances. The grievance procedure is not intended as a forum for initiating or negotiation policy changes between a group or groups of tenants and the MHA's Board of Commissioners.

I HAVE RECEIVED A COPY OF THIS GRIEVANCE PROCEDURE AND HAVE HAD AN OPPORTUNITY TO ASK QUESTIONS ABOUT THE PROCEDURE.

TENANT \_\_\_\_\_ DATE \_\_\_\_\_

TENANT \_\_\_\_\_ DATE \_\_\_\_\_