



SHELBURNE HOUSING AUTHORITY
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Grievance Policy & Procedures

Purpose

This Grievance Policy and Procedures are intended to assure that Shelburne Housing Authority (SHA) residents are afforded an opportunity for a fair and open hearing if the resident disputes any SHA action, or action of its Management Agent, or failure to act involving the resident's lease with SHA or other SHA rules or regulations which adversely affect the individual resident's rights, duties, welfare, or status. The Grievance Procedure is not intended as a forum for initiating or negotiating policy changes with the Authority's Management or Board. Issues of a policy nature may be addressed directly to the Management of the Authority whose decisions may be appealed to the SHA Board.

Management will provide each tenant with a copy of the grievance policy and Procedure at the time of lease signing, provide a copy and procedure for the Common room, and will upon request, provide guidelines for filing a grievance.

Definitions

Grievance:

- an allegation by a tenant that the that Franklin County Regional Housing and Redevelopment Authority (HRA), in its capacity as Management Agent for SHA, or an employee of HRA, 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 that the alleged action or failure to act has adversely affected the status, rights, duties, or welfare of the tenant or a household member;

Equal Housing Opportunity



- an allegation by a program participant that SHA or an HRA employee has acted or failed to act in accordance with any statute, regulation, or rule regarding the program and that the alleged action or failure to act has adversely affected the status, rights, duties, or welfare of the grievant or a household member; or
- an appeal by a data subject pursuant to applicable CMR regulations.
- The meaning of a statute, regulation, or rule shall not be the subject of a grievance. A dispute between a tenant and another tenant or household member, in which SHA and/or HRA 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.

Grievant: Any tenant or program participant who files a written grievance with the SHA in accordance with the SHA's grievance procedure. A grievant shall also include any person about whom the SHA and/or HRA holds data who pursues an appeal pursuant to applicable CMR regulations.

Hearing Officer: An impartial person who conducts grievance hearings in accordance with an approved grievance procedure and render written decisions based on the material facts and applicable law.

Initiation of Grievance

The Grievance Procedure is described in detail in the following pages. Please see Attachment A, *Steps in the Grievance Process*, for a one page summary.

A grievance regarding whether good cause exists for terminating a lease shall be initiated by a tenant in writing and shall be emailed, mailed, or delivered to the SHA at its main office within seven days after a notice of lease termination has been given to tenant.

A grievance regarding some other matter shall be initiated by a grievant in writing and shall be emailed, mailed or delivered to the SHA at its main office, or at a development office if so specified, no more than 14 days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance, provided that HRA, acting as SHA's Management Agent, shall have discretion to permit a grievance to be initiated late. SHA shall permit additional time for initiation of a grievance if the SHA shall find that there was a good reason for late initiation of the grievance and that the late initiation would not cause prejudice to SHA or HRA.

Informal Settlement Conference

Promptly after the initiation of a grievance, unless otherwise provided, SHA's Executive Director or his or her designee shall give the grievant the opportunity to discuss the grievance informally in an attempt to settle the grievance without necessity of a grievance hearing. SHA shall give reasonable advance notice to the grievant and his or her representative (if any) of a time and place for an informal settlement conference, unless such a conference shall have taken place when the grievance was delivered to SHA. If a matter 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 right to a grievance hearing.

Scheduling of Hearings

A grievance hearing regarding whether good cause exists for terminating a lease shall be scheduled within fourteen (14) days or as soon as reasonably practical after the date on which SHA receives the grievance. A hearing of a grievance regarding some other issue, shall be scheduled as soon as reasonably convenient following receipt of the grievance. SHA shall give reasonable advance written notice of the time and place of the hearing to the grievant and to his or her representative (if any). SHA or the hearing officer may reschedule a hearing by agreement or upon showing by grievant or by SHA that rescheduling is reasonably necessary.

Pre-Hearing Examination of Relevant Documents

Prior to a grievance hearing SHA shall give the grievant or his or her representative a reasonable opportunity to examine SHA documents which are directly relevant to the grievance. Following a timely request, SHA shall provide copies of such documents to grievant and, for good cause (including financial hardship), may waive the charge for the copies.

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. SHA 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 hearing SHA 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 officer may take other appropriate measures to deal with the misbehavior, including dismissing the grievance.

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 material, shall be received regarding such issues. Both the grievant and SHA 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 SHA rules and policies. The hearing officer may request SHA 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.

Decision of the Hearing Officer

Within fourteen (14) days following the hearing or as soon as thereafter as reasonably possible the hearing officer shall provide SHA 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 evidence at the grievance hearing and such additional information as may have been requested by the hearing officer. SHA shall 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 SHA and shall be open to public inspection.

Review by SHA's Board

In grievances where the decision concerns whether good cause exists for terminating a lease, there shall be no review by SHA's Board. In other cases, in the event that the grievant or SHA believes that (1) the decision of the hearing officer is not supported by facts, (2) the decision does not correctly apply applicable laws, regulations, rules and/or policies, or (3) the subject matter is not grievable, within 14 days of mailing or other delivery of the decision, the grievant or SHA may request review of the decision by SHA's Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting SHA and grievant to make oral presentations and submit documentation. The Board may also permit the hearing officer 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.

Review by the Department (DHCD)

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

Effect of a Decision on a Grievance

The decision on a grievance shall be binding between SHA 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 SHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.

Grievances on the Amount of Redetermined Rent

In the event that the tenant files a grievance as to the amount of a redetermined rent within 14 days of SHA's notice of the redetermined rent, the tenant shall continue to pay the rent then in effect (unless the redetermined rent is lower) until disposition of the grievance. Following disposition of the grievance, the tenant shall forthwith 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 SHA shall credit the tenant with any amounts paid but determined not to have been due. In the absence of a grievance, the redetermined rent shall be paid beginning on its effective date.

Grievance Hearing as a Condition of Lease Termination Under Certain Circumstances

The lease shall contain provisions that, after SHA gives a notice of lease termination to a tenant, the tenant may request a grievance hearing regarding whether good cause exists for terminating the lease, provided that no grievance hearing shall be requested or held under any of the circumstances specified as (1) - (8) in M.G.L. c. 121B §32, including the following circumstances:

- a) in the event of non-payment of rent;
- b) in the event SHA has reason to believe that tenant or a household member:
 - i. has unlawfully caused serious physical harm to another tenant or an employee of HRA or any other person lawfully on SHA's property;
 - ii. has unlawfully threatened to cause serious physical harm to any member of a tenant household or an HRA employee or any person lawfully on SHA's property;
 - iii. has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or of SHA or of any person lawfully on SHA's property, if such conduct involved a serious threat to the health or safety of any such person;
 - iv. has unlawfully possessed, carried, or kept a weapon on or adjacent to SHA's property in violation of M.G.L. c.269 §10;
 - v. has unlawfully possessed or used an explosive or incendiary device on or adjacent to SHA's property or has otherwise violated M.G.L. c. 266 §§101, 102, 102A or 102B;

- vi. 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 §31, on or adjacent to SHA's property;
 - vii. has engaged in other criminal conduct which has seriously threatened or endangered the health or safety of any member of a tenant household, an HRA employee, or any person lawfully on SHA's property; or
 - viii. has engaged in behavior which would be cause for voiding the lease pursuant to the provisions of M.G.L. c. 139 §19; or
- c) in the event SHA has reason to believe that a guest of tenant or a guest of a household member has engaged in any of the behavior listed in (b) and that tenant knew beforehand or should have known beforehand that there was a reasonable possibility that the guest would engage in misconduct.

Grievance Hearing Prior to Lease Termination

The lease shall provide that in circumstances where a grievance hearing as to lease termination is permissible the following shall apply:

- a) The tenant shall make a written request for a grievance hearing to SHA within seven (7) days after a notice of lease termination has been given to tenant. The grievance hearing shall be held pursuant to SHA's grievance procedure. At the grievance hearing any additional reason for termination of the lease, which arose subsequent to the date of the notice of termination, shall be considered so long as SHA has given written notice to the tenant as to the additional reason not less than three (3) days before the hearing, or, if a reason for eviction shall have arisen within such three day period, a

subsequent session of the hearing may be scheduled on not less than three (3) days' notice to consider such reason.

- b) In cases where tenant is entitled to a grievance hearing and has made a timely request, SHA shall not file a summary process summons and complaint pending the hearing and a decision or other resolution in SHA's favor. The SHA shall schedule such a hearing on a date within thirty (30) days from the date of a request for a grievance hearing and at least fifteen (15) days prior to the date of termination and shall give written notice of not less than seven (7) days of the time and place to tenant. In the event a decision on a grievance determines that good cause exists for terminating a lease, SHA may thereupon file the summary process summons and complaint, and there shall be no review of the decision by the Board or the Department.

Additional Provisions

- a) SHA and HRA shall take no administrative or court action against any tenant involving any matter before the Hearing Officer, the SHA Board, or the Department of Housing and Community Development until a final decision has been reached on the matter pursuant to 760 CMR 6.08 (4).
- b) The decision by the Hearing Officer, SHA Board (or sub-committee thereof), or the Department of Housing and Community Development shall not in any way limit nor constitute a waiver in any manner whatsoever of the right of the grievant or SHA or HRA to a trial de novo in court proceedings which may thereafter be brought. In such court proceedings, the parties shall be limited to the grounds relied upon at the hearing conducted in accordance with these procedures. If a party wishes to introduce new evidence or rely on new grounds in any subsequent court proceedings, the other party must be notified in

advance of the new evidence or grounds and a hearing shall be conducted in accordance with these regulations on the new evidence or grounds. The grievant failure to pursue all or any part of the complaint and hearing remedies herein shall not constitute a waiver of or bar to any court or other remedy available to the grievant.

Hearing Officers, Appointment, and Jurisdiction

- a) This grievance procedure adopted by SHA requires a hearing and determination of a matter subject to the procedure by a single hearing officer.
- b) SHA shall have not less than two hearing officers appointed under this policy. One officer shall be designated as the primary hearing officer and all other officers shall be designated as alternate hearing officers. If the primary hearing officer is unavailable or unable to attend to a grievance, the alternates shall be contacted in order of their appointment until an officer who is available is identified.
- c) 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 except for those persons who are subject to a different grievance procedure.
- d) The Executive Director 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 and reliable written determinations of matters at issue. The Executive Director shall submit a written nomination(s) for hearing officer(s) to the SHA Board. Each nomination shall include a description of the qualifications of the nominee and the proposed length of the term for which he or she is nominated.
- e) The SHA Board may, at its discretion, request the presence of a nominee at a regular or special meeting of the Board to interview the nominee. Such an

interview will take place in open session as the nominee shall have been preliminarily screened by HRA's staff.

- f) If the SHA Board elects to interview the candidate, the Board shall approve or disapprove of the nominee at the conclusion of the interview after deliberation.
- g) If the SHA Board approves the nominee, the nominee shall thereupon become a hearing officer upon written acceptance emailed, mailed, or delivered to SHA's main office.
- h) If the SHA Board disapproves the nominee, a written notice of disapproval shall be delivered to the Executive Director of SHA stating the specific reasons that the nominee was rejected.
- i) Each hearing officer shall periodically certify to SHA 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 SHA shall render the hearing officer's position vacant. SHA may, at the discretion of the Executive Director, provide a hearing officer with additional time to submit his or her annual certification.

Impartiality of the Hearing Officer

- a) 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.
- b) 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.
- c) 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.
- d) Each hearing officer shall determine any matter at issue impartially and

objectively on the basis of the evidence and applicable law.

- e) 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 s/he has been requested to do so.

Removal of a Hearing Officer

- a) 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.
- b) The SHA Board may vote to remove the hearing officer after HRA staff has provided notice to the hearing officer and the opportunity for him or her to be heard at a regular or special meeting of the Board.

Appointment of Interim Hearing Officers

- a) If there is not a hearing officer able and willing to serve for one or more pending matters, and if use of the appointment process in section 2 of this grievance procedure would likely cause significant delay with potential adverse consequences to either SHA or the grievant, SHA may request that an interim hearing officer be named by the Massachusetts Department of Housing and Community Development. Such a request shall be in writing and shall specify the reason for the request. If DHCD finds there to be a reasonable need for an interim hearing officer, it shall designate an individual to serve in this capacity.
- b) 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 SHA to be appointed to the position of hearing officer in the manner set out in this policy.

Attachment A: Steps in the Grievance Process*

Applicable for State Public Housing Units

1.	Housing Authority sends tenant notice about action it plans to take and right to grievance hearing, OR, Tenant has a problem with Housing Authority
2.	Tenant must file a written grievance or loses right to a hearing.
3.	Informal conference held
4.	Tenant is encouraged, but not required, to attend informal conference.
5.	If not resolved, housing authority notifies tenant about grievance hearing date.
6.	Tenant entitled to review housing authority documents
7.	Grievance hearing held
8.	Decision issued
9.	Tenant or housing authority may appeal decision to Housing Authority Board.
10.	If Housing Authority Board significantly changes decision, tenant may appeal to state housing agency (DHCD).

* Adapted from "Using Your Public Housing Grievance Process", a booklet produced by the Massachusetts Law Reform Institute, and can be found at:

<https://www.masslegalhelp.org/housing/lt3-your-grievance-process.pdf>