

GRIEVANCE PROCEDURE

NEW BRUNSWICK HOUSING AUTHORITY

INTRODUCTION

The grievance procedure defined in HUD regulations is applicable to resident families in public housing who disagree with an action, decision, or inaction of the New Brunswick Housing Authority (NBHA). The grievance procedure describes the policies to be used when families disagree with an NBHA decision. It is the policy of the NBHA to ensure that all families have the benefit of all protections due to them under the law.

GRIEVANCE PROCEDURES

Definitions

Grievance. Any dispute which a resident may have with respect to an NBHA action or failure to act in accordance with the individual tenant's lease or NBHA regulations which adversely affect the individual tenant's rights, duties, welfare, or status.

Complainant. Any tenant whose grievance is presented to the NBHA.

Hearing Officer. A person selected in accordance with this grievance procedure to hear grievances and render a decision with respect thereto.

Resident. A lessee or the remaining head of household of any tenant family residing in housing accommodations owned or leased by the NBHA.

Elements of Due Process. An eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required.

Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;

Opportunity for the tenant to examine all relevant documents, records, and regulations of the PHA prior to the trial for the purpose of preparing a defense;

Right of the tenant to be represented by counsel;

Opportunity for the tenant to refute the evidence presented by the NBHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;

A decision on the merits of the case.

Applicability

This Grievance Procedure applies to all individual grievances, except any grievance concerning a termination of tenancy or eviction that involves:

- a) Any criminal activity, that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or NBHA employees, or
- b) Any violent or drug-related criminal activity *on* or *off* such premises, and
- c) Any criminal activity that resulted in a felony conviction of a household member.

In addition, the Grievance Procedure does not apply to disputes between residents not involving the NBHA and grievances involving a class or group of residents.

Pre-Hearing Procedures

Informal Conference Procedures

Any grievance shall be presented orally or in writing to the NBHA office or to the housing management office who sent the notice on which the grievance is based. Written grievances must be signed by the complainant. The grievance must be presented within a reasonable time, not past the first working day after the 10th day of the action or failure to act which is the basis for the grievance. It may be simply stated, but shall specify:

The particular grounds upon which it is based,

The action requested; and

The name, address, and telephone number of the complainant, and similar information about the complainant's representative, if any.

The purpose of the initial discussion is to resolve the grievance without the necessity of a formal hearing.

Within five working days, a summary of this discussion will be given to the complainant by an NBHA representative. One copy will be filed in the resident's file.

The summary will include: names of participants, the date of the meeting, the nature of the proposed disposition, and the specific reasons for the disposition. The summary will also specify the steps by which an formal hearing can be obtained.

Dissatisfaction with Informal Conference

If the complainant is dissatisfied with the proposed disposition of the grievance, s/he shall submit a written request for a hearing within 10 working days of the date of the summary of the informal meeting.

The request for a hearing must be presented to the NBHA's central office.

The request must specify the reason for the grievance request and the relief sought.

Failure to Request a Formal Hearing

If the complainant does not request a formal hearing within 10 working days, s/he waives his/her right to a hearing, and the NBHA's proposed disposition of the grievance will become final. This section in no way constitutes a waiver of the complainant's right to contest the NBHA's disposition in an appropriate judicial proceeding.

Right to a Hearing

After exhausting the informal conference procedures outlined above, a complainant shall be entitled to a hearing before a hearing officer.

The head of household or other adult household member must attend the hearing.

If rescheduling of the hearing is necessary, the hearing must be rescheduled at least 10 days in advance of the scheduled hearing time or the complainant waives their right to a hearing.

If the complainant fails to appear within 30 minutes of the scheduled time, the complainant waives their right to a hearing.

The NBHA will provide reasonable accommodation for persons with disabilities to participate in the hearing. The NBHA must be notified within 10 days of the scheduled time if special accommodations are required.

Selection of Hearing Officer

A grievance hearing shall be conducted by an impartial person or persons appointed by the NBHA other than the person who made or approved the NBHA action under review, or a subordinate of such person.

Procedures to Obtain a Hearing

Informal Prerequisite

All grievances must be informally presented as a prerequisite to a formal hearing.

The hearing officer may waive the prerequisite informal conference if, and only if, the complainant can show good cause why s/he failed to proceed informally.

Escrow Deposit

Before a hearing is scheduled in any grievance involving an amount of rent the NBHA claims is due, except grievances concerning imputed welfare benefits or the use of minimum rent, the complainant shall pay an escrow deposit to the NBHA in an amount of all rent due and payable as of the month preceding the month in which the act or failure to act took place. Grievances concerning imputed welfare benefits and minimum rents are exempt from the escrow deposit requirements.

The complainant shall thereafter deposit the same amount of the monthly rent in an escrow account

each month until the complaint is resolved by decision of the hearing official or panel.

The NBHA may waive these escrow requirements in extraordinary circumstances.

Unless so waived, failure to make the required escrow payments shall result in termination of the grievance procedure.

Failure to make such payments does not constitute a waiver of any right the complainant may have to contest the NBHA's disposition of the grievance in any appropriate judicial proceeding.

Scheduling

If the complainant complies with the procedures outlined above, a hearing shall be scheduled by the hearing officer promptly within 10 working days at a time and place reasonably convenient to the complainant and the NBHA.

A written notification of the date, time, place, and procedures governing the hearing shall be delivered to the complainant and the appropriate NBHA official.

Hearing Procedures

The hearing shall be held before a hearing officer.

The complainant shall be afforded a fair hearing and be provided the basic safeguards of due process to include:

The opportunity to examine and to copy before the hearing all documents, records and regulations of the NBHA that are relevant to the hearing with at least a 24 hour notice to the legal department prior to the hearing. Any document not so made available after request by the complainant may not be relied upon by the NBHA at the hearing.

The NBHA shall also have the opportunity to examine and to copy all documents, records and statements that the family plans to submit during the hearing to refute the NBHA's inaction or proposed action. Any documents not so made available to the NBHA may not be relied upon at the hearing.

The right to a private hearing unless otherwise requested by the complainant.

The right to be represented by counsel or other person chosen as a representative.

The right to present evidence and arguments in support of the complaint, to controvert evidence presented by the NBHA, and to confront and cross-examine all witnesses upon whose testimony or information the NBHA relies, limited to the issues for which the complainant has received the opportunity for a formal hearing; and

The right to a decision based solely and exclusively upon the facts presented at the hearing.

If the hearing officer determines that the issue has been previously decided in another proceeding, a decision may be rendered without proceeding with the hearing.

If the complainant or NBHA fail to appear at the scheduled hearing, the hearing officer may make a determination that the party has waived his/her right to a hearing.

Such a determination in no way waives the complainant's right to appropriate judicial proceedings in another forum.

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the NBHA must sustain the burden of justifying the NBHA action or failure to act against which the complaint is directed.

The hearing shall be conducted by the hearing officer as follows:

Oral and 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 NBHA, complainant, counsel, and other participants and spectators to conduct themselves in an orderly manner. The failure to comply with the directions of the hearing official/panel to maintain order will result in the exclusion from the proceedings, or a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

The NBHA arranges, in advance, in writing, for a transcript or audiotape of the hearing. Any interested party may purchase a copy of such transcript.

Decisions of the Hearing Officer/Panel

The hearing officer shall give the NBHA and the complainant a written decision, including the reasons for the decision, within 10 working days following the hearing. The NBHA will place one copy in the tenant files. The written decision will be sent to the address provided at the hearing.

The decision of the hearing officer shall be binding on the NBHA which shall take all actions necessary to carry out the decision, unless the NBHA Board of Commissioners determines within 10 working days of the next Board meeting following the decision of the hearing officer and so notifies the complainant that:

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

The decision of the hearing officer is contrary to applicable Federal, State, or local law, HUD regulations or requirements of the Annual Contributions Contract between HUD and the NBHA.

A decision by the hearing officer or NBHA Commissioners in favor of the NBHA 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, the rights of the complainant to a trial or judicial review in any proceedings which may thereafter be brought in the matter.

Housing Authority Eviction Actions

If a tenant has requested a hearing in accordance with these duly adopted Grievance Procedures on a complaint involving a NBHA notice of termination of tenancy, and the hearing officer upholds the NBHA action, the NBHA shall not commence an eviction action until it has served a notice to vacate on the tenant.

In no event shall the notice to vacate be issued prior to the decision of the hearing officer 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 as stated in the notice of termination, whichever is later, appropriate action will be brought against the complainant. The complainant may be required to pay court costs and attorney fees.