

State Grievance Procedure

(Amended in accordance with Chapter 179 of the Acts of 1995)

I. PURPOSE, SCOPE AND APPLICABILITY

- A. Purpose - The purpose of this procedure is to ensure that Somerville Housing Authority (SHA) tenants in state subsidized units have a recognized method for informally resolving disputes with the SHA, and to afford tenants the opportunity for a fair hearing within a reasonable time if the dispute cannot be settled informally.
- B. Grievant - Any tenant in state subsidized public housing who has signed an SHA lease may use this grievance procedure. Any person who is listed on the latest continued occupancy form as a member of the tenant household who remains on the premises after the tenant has vacated may also use this grievance procedure.
- C. Scope and Applicability - This procedure applies to any dispute which a grievant may have with respect to SHA action or failure to act in accordance with the lease or any statute, regulation, policy or procedure that affects the tenant's rights, duties, welfare or status or to any complaint regarding an SHA employee.

II. THE HEARING PANEL

- A. Nominations - The Hearing Panel Pool shall have at least fourteen (14) members. At least two (2) members of the Pool shall be tenants nominated by the Mystic Tenants Association, at least two (2) members of the Pool shall be tenants nominated by the Clarendon Hill Tenants Association, and at least four (4) members of the Pool shall be tenants nominated by the tenants associations in at least three (3) elderly/handicapped buildings. The SHA Executive Director shall nominate four (4) staff members. The remaining two (2) members may not be officers, employees, agents, or tenants of the SHA and will be nominated jointly by the tenant and staff members of the Hearing Panel Pool.
- B. Appointment and Term - Unless there is cause to reject a nomination, Hearing Panel Pool Members will be appointed by the SHA Board of Commissioners for a term of three (3) years, and may be reappointed to serve successive terms. Vacancies shall be filled by the same procedure used for designating original members. If a vacancy occurs in the middle of a member's term, the newly appointed member shall serve for the remainder of the unexpired term.
- C. Composition - Each Hearing Panel will be composed of three (3) members: one (1) tenant, one (1) staff and one (1) independent. Where the grievant is a tenant in family housing, the tenant panel member shall be from a family development other than the one in which the grievant resides, unless no such member is available. Where the grievant resides in elderly/handicapped housing, the tenant panel member shall be from an elderly/handicapped building other than the one in which the grievant resides, unless no such member is available. The independent member shall be the "presiding officer" of the Hearing Panel. An SHA staff member shall be the Hearing Panel Clerk.
- D. Disqualifications - Any person who is related to the grievant or who participated in the decision that is the subject of the grievance shall be disqualified from sitting on the Panel for that hearing. Any Panel Member who believes that she/he cannot be impartial in a particular matter may disqualify himself/herself from the Panel for that hearing.
- E. Meeting Times - The Hearing Panel shall meet as often as necessary to ensure that all grievances are heard within twenty (20) working days from the time the grievant files the request for a hearing. Meetings shall be during regular business hours of the SHA at its Administration Building.
- F. Expenses - The SHA shall pay for all supplies, space, and clerical staff required by the Hearing Panel. Tenant members shall receive a thirty (\$30.00) dollar stipend for every day that they sit on the Hearing Panel.
- G. Training - The SHA shall provide the Hearing Panel Pool with training at its expense from time to time. Tenant members shall receive a stipend of thirty (\$30.00) dollars per day for each day of training.

III. INFORMAL SETTLEMENT

- A. Eviction Cases - Before terminating the tenancy of a tenant, SHA management will invite the tenant to a private conference to discuss the alleged lease violations and, where appropriate, to attempt to resolve the matter informally. If an informal settlement is not reached, SHA will provide the tenant with a written notice after the conference which will inform the tenant of the decision and except in cases concerning nonpayment of rent and the other exceptions set out in Paragraph IVA below, will specify the procedure for requesting a grievance hearing.
- B. All Other Grievances - A tenant who is aggrieved by any action or inaction of the SHA as described in Paragraph I C above, other than a proposed eviction, may present the grievance in writing at the Manager's Office or at the Administration Building. The tenant may use a Grievance form which shall be available at the SHA's Administration Building, from the Management Office, or from the local tenants' organization. All grievances must specify the particular facts that are the basis of the grievance and must specify the action that the tenant wants the SHA to take or refrain from taking. If the grievance is presented in response to any SHA action, the tenant must present the grievance within ten (10) working days after the tenant receives written notice of the SHA action. A tenant whose grievance is related to the amount of rental shall, before instituting the grievance procedure, pay to the SHA all undisputed amounts of rent due. Upon receipt of the grievance, Management may request the tenant to attend a meeting to attempt to resolve the grievance informally. All informal resolutions shall be in writing and signed by Management and the grievant. Unless the grievance is resolved informally, then Management shall send its written, dated and signed decision to the grievant within

ten (10) working days after its receipt of the grievance. The written answer shall specify the proposed disposition of the grievance and the specific reasons therefore, and shall specify the procedures by which a hearing may be obtained if the grievant is not satisfied.

If Management fails to deliver a written Answer within ten (10) working days, the grievant may request a hearing in writing within ten (10) working days of the date upon which Management's Answer was due. The request must be mailed or delivered to the Hearing Panel Clerk, Somerville Housing Authority, 30 Memorial Road, Somerville, MA 02145.

IV. PROCEDURES TO REQUEST A HEARING

A. Eviction Cases - After the tenant is given the opportunity to attend a private conference, if the matter is not resolved, the tenant will be given a Notice of Intent to Terminate Tenancy or Notice to Quit. The Notice will inform the tenant of Management's decision to proceed with eviction and will inform the tenant that she/he may request a grievance hearing in writing within five (5) working days, except in cases of nonpayment of rent and where there is reasonable cause to believe that the tenant or a member of the tenant's household has: (1) caused physical harm to another tenant or employee of the SHA or other person lawfully on SHA property; (2) threatened to seriously physically harm such person; (3) destroyed, vandalized, or stolen property of a tenant or the SHA or any person lawfully on SHA property which thereby creates or maintain a serious threat to the health or safety of a tenant or employee of the SHA or other such person; (4) on or adjacent to SHA property, possessed or carried or illegally kept a weapon in violation of Section 10 of Chapter 269 of the General Laws or possessed or used an explosive or incendiary device or has violated any other provision of Section 101, 102, 102A or 102B of Chapter 266 of the General Laws; or (5) on or adjacent to SHA property, unlawfully possessed, sold, or possessed with intent to distribute a controlled substance as defined in classes A, B or C of Section 31 of Chapter 94C of the General Laws; or (6) engaged in other criminal conduct which seriously threatened or endangered the health or safety of another tenant, an employee of the SHA or any other person lawfully on SHA property; or (7) for any of the reasons set forth in Section 19 of Chapter 139; or (8) a guest of a tenant or of a household member engages in any such behavior listed in clauses (1) to (7) inclusive, where the tenant knew or should have known that there was a reasonable possibility that the guest would engage in misconduct.

B. All Other Grievances - All requests for hearings regarding any action or inaction of the SHA as described in Paragraph I C above, other than a proposed eviction, must be presented in writing within ten (10) working days of the tenant's receipt of Management's Answer as described in Paragraph III B above.

C. Failure to Request a Hearing - If the grievant does not request a hearing in accordance with Paragraph IV A or IV B above, then the SHA's disposition of the grievance under Paragraph III shall become final, provided that the failure to request a hearing shall not constitute a waiver by the grievant of her/his right thereafter to contest the SHA's disposition of the grievance in an appropriate judicial proceeding.

V. PROCEDURES GOVERNING THE HEARING

A. Before the Hearing

(1) The Hearing Panel Clerk shall give the grievant at least five (5) working days notice of the hearing date which shall be not later than twenty (20) working days from receipt of the tenant's request for a hearing.

(2) The grievant and/or her authorized representative shall have adequate opportunity to inspect and copy all documents, records and rules of the SHA that are relevant to the hearing. Any document that is not so made available by SHA may not be relied on by SHA at the hearing.

(3) A postponement may be granted by the Hearing Panel because of illness or unavoidable absence of a necessary person, or for other good cause. The Panel may require written verification of the reason for the postponement. Hearings may also be postponed by agreement of the grievant and the SHA.

(4) The grievant or the SHA may arrange, in advance and at their own expense, for a transcript of the hearing. The other party may purchase a copy of such transcript at the actual cost of reproduction.

B. The Hearing

(1) The grievant has the following rights:

(a) to be represented by counsel or any other person of her/his choice.

(b) the right to a private hearing unless the grievant requests a public hearing.

(c) the right to present evidence and arguments in support of the grievance, to controvert evidence relied on by SHA, and to confront and cross-examine all witnesses on whose testimony the SHA relies.

(2) If the grievant or SHA fails to appear at a scheduled hearing, the Hearing Panel may decide to postpone the hearing for not more than five (5) business days or may determine that the party has waived the right to a hearing. The Hearing Panel Clerk shall notify both parties in writing of the decision. A decision that the grievant has waived the right to a hearing shall not constitute a waiver of any right the grievant may have to contest the SHA's disposition of the grievance in an appropriate judicial proceeding.

(3) In pre-eviction hearings, the SHA presents its case first. In all other hearings, the grievant presents her case first. The Hearing Panel may interrupt either side at any time to ask questions.

(4) The formal rules of evidence are not used at grievance hearings, and any evidence that the Presiding Officer rules is relevant will be allowed to be introduced. After both sides have presented their evidence, they will each be allowed the opportunity to make a closing statement.

(5) The Hearing Panel shall require that all participants or spectators at grievance hearings conduct themselves in an orderly fashion. Failure to comply with the directions of the Presiding Officer to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of a disorderly party and grant or denial of the relief sought, as appropriate.

(6) All grievance hearings shall be tape recorded, and the tape recordings shall be kept on file by the Hearing Panel Clerk. The grievant and the SHA will be allowed access to the tape of the hearing by appointment during business hours at the

SHA Administration Building.

C. The Hearing Panel's Decision

- (1) After the Presiding Officer adjourns the hearing, the Hearing Panel will make their decision in closed session.
- (2) A majority vote shall be necessary for any decision by the Hearing Panel.
- (3) The decision shall be based solely and exclusively upon the evidence presented at the hearing and upon applicable law and regulations.
- (4) The decision shall be in writing, and shall contain the date of the decision and the reasons for the decision.
- (5) The Hearing Panel Clerk shall send a copy of the decision to the grievant, her representative, and to the SHA. SHA shall retain a copy of the decision, with all names and identifying references deleted, on file for public inspection.

D. Appeals

- (1) The decision of the Hearing Panel shall be binding on the SHA, which shall take all actions or refrain from any actions necessary to carry out the decision unless the SHA Executive Director initially determines and notifies the Tenant within ten (10) working days from SHA's receipt of the decision that all or any part of the decision is arbitrary, in excess of the authority of the Hearing Panel or violates state law or regulations and that the SHA Board of Commissioners will review the decision.

The SHA Board, which must review the decision no later than its next regular meeting, may reverse all or any part of the decision of the Hearing Panel and/or may modify any assessment of money damages against the grievant if the Board finds that the Hearing Panel acted arbitrarily, exceeded its authority or violated state law or regulations.

- (2) The grievant shall act in accordance with the decision of the Hearing Panel, unless the grievant notifies SHA within ten (10) working days of receipt of the decision, that she requests a review by the SHA Board of Commissioners. The SHA Board must hear the grievant's appeal no later than its next regular meeting and may reverse or modify the Hearing Panel's decision as requested by the grievant, or may allow the decision of the Hearing Panel to stand.

The SHA Board shall, within five (5) working days of the meeting at which the appeal was heard, notify the grievant in writing of its decision and of the specific reasons for its decision. A copy of the notice shall be filed with the Hearing Panel Clerk.

- (3) If the Hearing Panel's decision is not upheld by the SHA Board, the grievant may appeal to the Secretary of the Executive Office of Communities and Development within fifteen (15) working days of receipt of the Board's decision. The grievant's appeal must be in writing and must set forth the reasons why the decision of the Hearing Panel should be affirmed, or why the SHA Board acted arbitrarily, exceeded its authority or violated state law or regulations. The grievant must send a copy of her appeal to the SHA.

E. Effect of the Hearing Panel Decision

- (1) No tenant may file a subsequent grievance on the same dispute unless facts and circumstances have changed since the hearing.

(2) The decision of the Hearing Panel or the SHA Board and any decision by EOCD on an appeal of the tenant shall not in any way limit nor constitute a waiver in any manner whatever of the right of tenant or SHA to a trial de novo in court proceedings which may thereafter be brought. In such court proceedings, the SHA shall be limited to the grounds relied upon in its proposed disposition of the tenant's grievance. If the SHA wishes to introduce new evidence or rely on new grounds in any subsequent court proceedings, the tenant must be notified in advance of the new evidence or grounds. The tenant's failure to pursue all or any part of the grievance and hearing remedies herein shall not constitute a waiver of or bar to any court or other remedy available to the tenant.

- (3) The SHA shall take no administrative or court action against any tenant involving any matter before the Hearing Panel, the SHA Board, or EOCD until a final decision has been reached on the matter.

VI. NOTICES

All notices, answers or decisions required under these procedures to be sent to the Tenant must be delivered in person to an adult member of the tenant household or mailed by first class mail.

All notices or requests required to be sent to the SHA must be delivered or mailed first class to the SHA Administration Building.