

# GRIEVANCE PROCEDURE



## PART A

### 1. GENERAL OVERVIEW

- A. Department of Housing and Community and Development (DHCD) regulations (760 CMR 6.08) require each local housing authority (LHA) to have a grievance procedure of which the purpose shall be the prompt and reliable determination of grievances. The procedure must be available to state-aided public housing tenants, participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP), and to individuals who file appeals pursuant to 760 CMR 8.00 (Privacy and Confidentiality). This policy is applicable to our Federally-Assisted Sites and as such where applicable HUD regulations apply to the Grievance being considered (see: Appendix 1).
- B. A grievance is defined as: (1) an allegation that an LHA or an LHA employee 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 the alleged action or failure to act has adversely affected the status, rights, duties or welfare of the grievant and/or a household member; (2) an allegation that an LHA or an LHA 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 (3) an appeal by a data subject pursuant to 760 CMR 8.00.
- C. 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 the LHA 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.

### 2. INITIATION OF A GRIEVANCE

- A. A grievance regarding whether good cause exists for terminating a lease shall be initiated by a tenant, in writing, and shall be mailed (postmarked) or delivered to the Fall River Housing Authority (FRHA) at its main office within seven (7) days after a notice of lease termination has been given to the tenant by the FRHA.
- B. A grievance regarding whether cause exists for terminating participation in the MRVP or AHVP shall be initiated by a program participant, in writing, and shall be mailed (postmarked) or delivered to the FRHA at its main office within seven (7) days after a notice of program termination has been given to the tenant by the FRHA.

- C. A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed (postmarked) or delivered to the FRHA at its main office no more than fourteen (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 the FRHA shall have discretion to permit a grievance to be initiated late.
- D. In the event that a tenant files a grievance as to the amount of a redetermined rent within fourteen (14) days of the FRHA's notice of the redetermined rent, the tenant shall continue to pay the rent then in effect (unless the redetermined rent is lower) until final disposition of the grievance. Upon final disposition of the grievance, the tenant shall 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 the FRHA shall credit the tenant with any amounts paid but determined not to have been due.
- E. The FRHA shall permit additional time for initiation of a grievance if the FRHA shall find that there was a good reason for late initiation of the grievance and that the late initiation would not cause prejudice to the FRHA. The FRHA shall have available forms on which a grievance may be initiated.

### **3. INFORMAL SETTLEMENT CONFERENCE**

- A. Promptly after the initiation of a grievance, unless otherwise provided, the FRHA'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 the necessity of a grievance hearing. The FRHA 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 the FRHA. At the informal settlement conference, the FRHA and the grievant may be represented by a lawyer or by a non-lawyer. If the grievance is resolved at the informal settlement conference, the FRHA and grievant shall acknowledge the terms of the resolution in writing. If the grievance is resolved at the informal settlement conference no grievance hearing shall be held. If a grievance is not resolved at the informal conference, a grievance hearing shall be held. Failure to attend an informal settlement conference shall not affect a grievant's right to a grievance hearing.

### **4. RIGHT TO A HEARING**

- A. The FRHA's hearing panel shall conduct hearings on grievances filed by a public housing tenant, a program participant, or a data subject concerning a grievable matter, provided that no grievance hearing regarding whether good cause exists for terminating a lease shall be requested or held under any of the circumstances specified in MGL c.121B, §32, including the following circumstances.
  - 1) in the event of non-payment of rent;
  - 2) in the event the FRHA has reason to believe that tenant or household member:
    - (a) has unlawfully caused serious physical harm to another tenant or employee of the FRHA or any other person lawfully on the FRHA's property;

- (b) has unlawfully threatened to cause serious physical harm to any member of a tenant household or an FRHA employee or any person lawfully on the FRHA's property;
  - (c) has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or of the FRHA or of any person lawfully on the FRHA's property, if such conduct involved a serious threat to the health or safety of any such person;
  - (d) has unlawfully possessed, carried or kept a weapon on or adjacent to the FRHA's property in violation of MGL c.269 §10;
  - (e) has unlawfully possessed or used an explosive or incendiary device on or adjacent to FRHA's property or has otherwise violated MGL c.266 §§ 101, 102, 102A or 102B;
  - (f) has unlawfully possessed, sold or possessed with intent to distribute a class A, B or C controlled substance, as defined in MGL, c.94C §31, on or adjacent to the FRHA's property;
  - (g) has engaged in other criminal conduct which has seriously threatened or endangered the health or safety of any member of a tenant household, an FRHA employee, or any person lawfully on the FRHA's property, or
  - (h) has engaged in behavior which would be cause for voiding the lease pursuant to the provisions of MGL, c139, §19; or
- 3) in the event the FRHA has reason to believe that a guest of a tenant or a guest of a household member has engaged in any of the behavior listed in subparagraph 4 A (2) and that the tenant knew beforehand or should have known beforehand that there was a reasonable possibility that the guest would engage in misconduct.

## 5. HEARING DATE AND NOTICE OF HEARING

- A. The FRHA shall schedule of a grievance hearing regarding whether good cause exists for terminating a lease within fourteen (14) days after the date on which the FRHA receives the grievance. At such time, the FRHA shall set a date for the hearing no more than thirty (30) days from the date of the request for a grievance hearing (or as soon as reasonably practical thereafter) and at least fifteen (15) days prior to the date of termination.

The FRHA shall give grievant written notice of the date, time and place at least seven (7) days before the hearing. At the grievance hearing any additional reason(s) for termination of the lease, which arose subsequent to the date of the notice of termination, shall be considered so long as the FRHA has given written notice to the grievant as to the additional reason(s) not less than three (3) days before the hearing, or, if the additional reason(s) for termination shall have arisen within such three (3) day period, a subsequent session of the hearing may be scheduled on not less than three (3) days notice to consider such reason(s). In lease terminations if grievant is entitled to request a grievance hearing and has made a timely request, the FRHA shall not file a summary process summons and complaint seeking an eviction pending the hearing and a decision or other resolution in the FRHA's favor.

- B. A hearing of a grievance regarding an issue other than lease termination shall be scheduled as soon as reasonably convenient following receipt of the grievance. The FRHA 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 is known.

- C. The FRHA or the Presiding Member may reschedule a hearing by agreement of the FRHA and the grievant; or upon a showing by the grievant or by the FRHA that rescheduling is reasonably necessary.

## 6. PRE-HEARING EXAMINATION OF RELEVANT DOCUMENTS

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

## 7. 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 Presiding Member of the grievance panel otherwise orders. The FRHA 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 Presiding Member. At the grievance hearing, the FRHA 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 may be excluded. If the grievant misbehaves at the hearing, the hearing panel by majority vote may take other appropriate measures to deal with the misbehavior including dismissing the grievance.

## 8. PROCEDURE AT GRIEVANCE HEARINGS

The hearing panel shall conduct the grievance hearing in a fair manner without undue delay. The Presiding Member 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 the FRHA 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 panel members may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and FRHA rules and policies. The panel members may request the FRHA 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.

The tapes of the hearing shall be maintained by the FRHA until any applicable appeals have been decided. During that time grievant and or his or her representative may listen to the tapes at the FRHA's offices. **Hearings shall be limited to one-half (1/2) hour (fifteen (15) minutes per side, unless the presiding member extends the time for good cause.**

## 9. WRITTEN DECISION BY THE GRIEVANCE PANEL

Within fourteen (14) days following the hearing or as soon thereafter as reasonably possible, the hearing panel shall provide the FRHA 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 made by a vote of at least a majority of the panel members who heard the hearing. The decision shall be based on the

information at the grievance hearing and such additional information as may have been provided to the hearing panel at its request. The FRHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative if any. A copy of the decision (with names and personal identifiers deleted) shall thereafter be maintained at the FRHA and shall be open to public inspection.

## **10. REVIEW BY THE FRHA'S BOARD**

- A. In cases where the decision of the hearing panel concerns whether good cause exists for terminating a lease, there shall be no review by the FRHA's Board.
- B. In other cases, in the event that the grievant or the FRHA believes that:
  - 1) the decision of the hearing panel is not supported by the facts;
  - 2) the decision does not correctly apply the terms of the lease or applicable laws, regulations, rules and/or policies; or
  - 3) the subject matter is not grievable, within fourteen (14) days of mailing or other delivery of the decision, the grievant or the FRHA may request review of the decision by the FRHA's Board.
- C. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the FRHA and grievant to make oral presentations and/or submit documentation. The Board may also permit the hearing panel to make a presentation.
- D. The Board's review shall be at an open meeting unless an executive session is warranted pursuant to the Open Meeting Law.
- E. 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.

## **11. REVIEW BY THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

In the event that the FRHA's Board shall make a material change in a decision of the grievance panel, upon written request of the grievant, made to DHCD within fourteen (14) days of mailing or other delivery of the Board's decision, DHCD shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board. DHCD shall mail copies of its decision to the FRHA and the grievant or to their attorneys.

## **12. EFFECT OF A DECISION ON A GRIEVANT**

The final decision on a grievance (after any properly requested administrative reviews have been decided) shall be binding between the FRHA 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. In the event the hearing panel's decision on a grievance determines that good cause exists for terminating a lease, the FRHA may, upon receipt of the decision, file a summary process summons and complaint, and there shall be no review by the

Board or DHCD. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court. As between the FRHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.

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## PART B

### 1) THREE-MEMBER HEARING PANEL

All grievance hearings and determinations of a matter subject to this grievance procedure shall be by a **three-member** hearing panel except as otherwise provided herein. **One member** (and an alternate member to serve in the event of the member's unavailability for a hearing) shall be chosen by the FRHA, and **One member** (and such an alternate member) shall be chosen by the Fall River Joint Tenants Council (FRJTC). The third member (and such an alternate member) shall be chosen by agreement of the other two members. The third member (including the alternate member) shall not be a Board member of the FRHA or an officer of an FRJTC.

Whenever a member (including an alternate member) is chosen, notice of the choice shall be given to the member and shall specify the term, not to exceed seven years, for which the member so chosen shall serve. A copy of the notice shall be given to the FRHA (if the FRJTC made the choice) or to the FRJTC (if the FRHA made the choice). Each member so chosen shall mail or deliver his or her written acceptance to the FRHA promptly after being chosen. The FRHA shall maintain all such notices and acceptances in its files.

A hearing panel so chosen shall serve all tenants of state-aided public housing represented by the FRJTC(s) in the city or town as well as those who are unrepresented by an FRJTC and all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the FRHA.

Each member (including each alternate member) shall annually certify to the FRHA in writing that he or she is ready, willing and able to serve; failure to certify within ten (10) days of receipt of a written request by the FRHA shall render the member's position vacant. Upon a vacancy, however created, a new member shall be appointed in the same manner as the previous member was appointed. The FRHA shall maintain all such certifications in its files.

### 2) IMPARTIALITY OF MEMBERS

No member of a hearing panel, or a member of his or her family, which is to determine a particular matter, shall have or shall appear to have any direct personal or financial interest in the outcome. No member of a hearing panel, which is to determine a particular matter, shall be related by blood or marriage to any party or to any person who is the source of evidence as to facts that are disputed by the parties. No member 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.

Each member of the hearing panel shall determine any matter at issue impartially and objectively. Any panel member, who shall be or shall appear to be unable to determine any particular matter impartially or objectively on the basis of the evidence and applicable law, shall remove himself or herself as a member of the panel hearing the particular matter, whether requested or no. If he or she fails to do so, he/she shall be removed from the panel by the Presiding Member upon written objection by the FRHA, any affected LID, or the person who requested the hearing. Any member of a hearing panel who shall willfully obstruct prompt and reliable determination of any matter before

the panel shall be removed from the panel for that hearing by the Presiding Member upon such an objection.

**No person who has advised the grievant on the hearing matters will sit on the panel for the hearing.**

### **3) REMOVAL OF A MEMBER**

A member (including an alternate member) may be permanently removed as a member at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias, or partiality. The FRHA may remove the member which the FRHA appointed and the LID(s) may remove the member which the LID(s) appointed, after notice to the member and the opportunity for him or her to be heard. The FRHA and the LID(s) may jointly remove the member (or alternate) appointed by agreement of their appointees, after such notice and opportunity to be heard. If the FRHA and FRJTC(s) fail to agree on removal of a member chosen by agreement of their appointees, DHCD may remove that member for cause upon written request by either the FRHA or an LTD. The written request to DHCD shall contain a detailed specification of charges. DHCD's decision whether to remove a member shall be in writing mailed to the member, the FRHA and the affected LID(s). Prior to removing a member for cause, DHCD shall give the member, the FRHA and all affected LID(s) the opportunity to be heard. If a written specification fails to detail good and significant cause for removal, DHCD shall deny a request for removal without a hearing.

### **4) DESIGNATION OF A PRESIDING MEMBER**

Following their appointment a majority of the members (including alternate members) shall designate in writing one member to be the Presiding Member, who shall preside at grievance hearings or shall designate some other member to do so if he or she shall be absent. A majority of the members may designate in writing a different Presiding Member at any time. Written notice of the designation of a Presiding Member shall be given to the FRHA and the FRJTC(s).

### **5) SCHEDULING**

The FRHA shall be responsible for scheduling and other administrative matters, including all necessary notices. The FRHA shall consult each panel member and insofar as reasonably possible shall schedule hearings at times convenient for him or her or for his or her alternate.

### **6) QUORUM**

Reasonable efforts shall be made to have a **three-member** panel hear and decide each grievance. If a panel member without adequate notice to the FRHA fails to appear on a scheduled hearing date, or, if a panel member and his or her alternate are both not available at any time reasonably convenient for the other panel members, two members shall constitute a quorum and may render a decision. If a panel member removes himself or herself or is removed after a grievance hearing has been held on a grievance, the **remaining two members** may render a decision on the grievance.

## ADDENDUM I FEDERALLY-ASSISTED PUBLIC HOUSING PROGRAMS

### 1. PROVISIONS FOR FEDERAL PUBLIC HOUSING PROGRAM

- A. The FRHA Grievance Procedure shall be applicable to all Tenants<sup>1</sup> residing in FRHA's federally-assisted public housing program.
- B. Any grievance concerning a termination of tenancy or eviction from the federally-assisted public housing program shall be excluded from the FRHA Grievance Procedure when it involves:
1. Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the FRHA [24 CFR § 966.51 (a)(2)(i)];
  2. Violent or drug-related criminal activity [42 USC 1437d(1)] on or off such premises [24 CFR § 966.51 (a)(2)(i)];
  3. Abuse of alcohol in such a way that interferes with the safety, health, safety or right to peaceful enjoyment of the premises by other residents or Authority personnel;
  4. A Tenant or household member confirmed as being subject to the lifetime state sex offender registration requirement;
  5. Any criminal activity that resulted in felony conviction of a household member [24 CFR § 966.51 (a)(2)(i)];
  6. Conviction of a Tenant or any household member for the manufacturing or producing methamphetamine on the premises of federally-assisted housing; or
  7. Or any judicial eviction procedures for which HUD has issued a due process determination and whereby FRHA is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure [(24 CFR § 966.51 (a))]
- C. In accordance with 24 CFR § 966.51 (b), the FRHA Grievance Procedure shall not be applicable to disputes between tenants not involving the FRHA 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 FRHA Board of Commissioners.

### 2. APPEALS TO FRHA BOARD OF COMMISSIONERS

For all cases pertaining to FHRA federally-funded **public housing** programs, either party may appeal the decision of the Grievance Panel to the FHRA Board of Commissioners if they believe that the decision is contrary to HUD regulations or is not supported by the facts presented in the case.

### 3. HOUSING CHOICE VOUCHER (HCV) PROGRAM

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<sup>1</sup> Under this section, "Tenant" shall mean the adult person (or persons) other than a live-in aide who (a) resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit, (b) who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.

**D. APPLICABILITY**

The FRHA Grievance Procedure does *not* apply to participants of FRHA's federally-assisted Housing Choice Voucher (HCV) Program.

In lieu of the Grievance Procedure and in accordance with 24 CFR § 982.555 (Informal hearing for participant), FRHA must give an HCV participant family the opportunity for an *Informal Hearing* to consider whether the certain decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and PHA policies.

The FRHA Housing Choice Voucher Administrative Plan details all applicable procedures for conducting informal hearings and outlines the circumstances for when a hearing is required and when it is not required.

## **ADDENDUM 2**

### **REVIEW OF APPEALS TO FRHA BOARD**

1. The FRHA Board of Commissioners (“Board”) shall appoint a Committee (“Committee”) to review all requests for appeal to the Board of any Grievance Panel decision.
2. The Committee will make a recommendation to the Board as to whether the Tenant is entitled to a hearing pursuant to Part A Section 10.
3. Further, the Committee shall review all requests for appeal to the Board to determine if the specific grievance may be resolved without a formal Board hearing.
4. The composition of the Committee will be as follows:
  - A. FRHA Board Member representing Tenants
  - B. FRHA Executive Director
  - C. FRHA Deputy Executive Director