

# NEW YORK CITY HOUSING AUTHORITY

## GRIEVANCE PROCEDURES

### 1. APPLICABILITY

The following procedures are not intended to replace prior practices relating to communications between management and tenants, but rather to supplement them. Requests for services, repairs or other routine matters should continue to be handled diligently and in accordance with standard procedures. These procedures shall be applicable to all individual grievances, as hereinafter defined, between a tenant and the Authority. The grievance procedures shall not be applicable to disputes between tenants not involving the Authority or to class grievances. The procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the Authority.

### 2. DEFINITIONS

- a. "Grievance" shall mean any dispute which a tenant may have with respect to Authority action or failure to act in accordance with the individual tenant's lease or Authority regulations which adversely affect the individual tenant's rights, duties, welfare or status. It does not include a cause of action against the Authority for damages for injuries to real or personal property or for destruction thereof, or for damages for personal injury, alleged to have been sustained by reason of the negligence of, or by the creation or maintenance of a nuisance by the Authority, or any member, officer, employee or agent thereof, embraced within Section 157 of the New York State Public Housing Law or Section 50-e of the General Municipal Law, or any matter which does not directly concern an Authority action or failure to act in accordance with or involving complainant's lease or Authority regulations.
- b. "Complainant" shall mean any tenant whose grievance is presented at the project management office in accordance with these procedures.
- c. "Hearing Officer" shall mean a person selected in accordance with Section 8 of these procedures.
- d. "Tenant" shall mean any lessee or remaining head of the household of any tenant family residing in an Authority housing accommodation covered by these procedures.

### SUBDIVISION "A"

### 3. APPLICABILITY OF SUBDIVISION "A"

This subdivision shall be applicable to all grievances EXCEPT those involving holdover eviction proceedings based upon Non-desirability, Breach of Rules and Regulations, Chronic Breach of Rules and Regulations, Chronic Delinquency in the Payment of Rent, Non-verifiable Income, Assignment or Transfer of Possession, and Misrepresentation, which proceedings are governed by the procedures contained in "Subdivision B" herein.

### 4. INFORMAL SETTLEMENT

All grievances shall be personally presented, either orally or in writing, to the Management 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 copy retained in the project folder. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons thereof, and shall specify the procedures by which the Manager's disposition may be reviewed by the Borough Management Office and, if the disposition is still not to the tenant's satisfaction, the procedure by which a hearing may be obtained. In addition, if the grievance is related to a person's disability, a copy of the Housing Authority ADA/Section 504 grievance procedure shall be supplied.

### 5. REVIEW OF MANAGER'S DISPOSITION

In the event that the disposition by the manager does not satisfy the tenant, the tenant shall request, in writing within 10 days of notice of such disposition, that the matter be reviewed by the Borough Management Office and the manager shall thereupon transmit a copy of the summary to the Borough Management Office for review. The Borough Management Office shall then indicate in writing its agreement with the Manager's disposition, or, if it does not agree, its own disposition, and such disposition after review shall be sent to the tenant within a reasonable time. When the Manager's unsatisfactory determination relates to a person's disability and a request for review has been made, the case shall be referred to the Housing Authority designated ADA/Section 504 coordinator, who shall consult with the appropriate Borough Management Office in determining the appeal.

## **6. REQUEST FOR HEARING**

The complainant may pursue the matter further on condition that the complainant submit a written request for a hearing to the project Management Office within ten (10) days after receipt of the disposition of the Borough Management Office review pursuant to the preceding Section. The written request shall specify:

- a. the reason for the grievance; and
- b. the action or relief sought.

## **7. FAILURE TO REQUEST A HEARING**

If the complainant does not request a review of any disposition, as provided in paragraphs 5 and 6 hereof, such disposition shall become final. The failure to request a hearing shall not constitute a waiver by the complainant of his/her right thereafter to contest the Authority's action in disposing of the complaint in an appropriate judicial proceeding.

## **8. SELECTION OF HEARING OFFICER**

The Hearing Office shall be an impartial disinterested attorney admitted to practice before the Courts of New York State appointed in a Civil Service title approved by the New York City Civil Service Commission. Until such title is so approved, the Hearing Officer shall continue to be appointed in accordance with the existing procedure for the appointment of Hearing Officers (Tenancy).

## **9. HEARING PREREQUISITES**

All grievances shall be personally presented either orally or in writing pursuant to the foregoing paragraphs; provided, that if the complainant shall show good cause why he/she failed to proceed in accordance with said paragraphs to the Hearing Officer, the provisions of said informal procedures may be waived by the Hearing Officer. Before a hearing is scheduled in any grievance involving the amount of rent which the Authority claims is due, the complainant shall pay to the Authority an amount equal to the amount of rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. The complainant shall thereafter pay to the Authority the same amount of the rent, monthly, which shall be placed by the Authority in an escrow account, until the complaint is resolved by the decision of the Hearing Officer. These requirements may be waived by the Authority or its designee 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 Authority's disposition of his/her grievance in any appropriate judicial proceeding.

## **10. PROCEDURE GOVERNING THE HEARING**

- a. Upon complainant's compliance with the procedures specified above, a hearing shall be scheduled promptly and a written notice specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and notice delivered to the Hearing Officer. The Hearing Officer shall be liberal in granting reasonable adjournments requested by either party, for good cause shown, to a more convenient date.
- b. The hearing shall be held before a Hearing Officer.
- c. 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 Authority that are relevant to the hearing. Any document not so made available after request therefore by the complainant may not be relied on by the Authority at the hearing;
  2. the right to be represented by counsel or other person chosen as complainant's 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 the complaint, to controvert evidence relied on by the Authority or project management and to confront and cross-examine all witnesses on whose testimony or information the Authority or project management relies; and
  5. a decision based solely and exclusively on the facts presented at the hearing.
- d. 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.
- e. If the complainant or the Authority fail to appear at a scheduled hearing the Hearing Officer may make a determination to postpone the hearing for a period not to exceed five (5) business days or make a determination that the party has waived his/her right to a hearing. Both the complainant and the Authority shall be notified of the determination by the Hearing Officer; provided, that a determination that complainant has waived his/her right to a hearing shall not constitute a waiver of any right the complainant may have to contest the Authority's disposition of the grievance in an appropriate judicial proceeding.

- f. At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the Authority must sustain the burden of justifying the Authority's action or failure to act against which the complaint is directed.
- g. 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 Authority, 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 may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denying the relief sought, as appropriate.
- h. The complainant or the Authority may arrange in advance and at the expense of the party making the arrangement, for a transcript of the hearing, provided that he/she deposits with the Authority an amount estimated by the Authority to cover the cost thereof prior to the transcription of the record. Any interested party may purchase a copy of such transcript.

## 11. **DECISION OF HEARING OFFICER**

The Hearing Officer shall prepare a written decision setting forth the reasons therefore within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the Authority. The Authority shall retain a copy of the decision in the tenant's folder. A copy of such decision, with any names and identifying references deleted, shall also be maintained on file by the Authority at Central Office and made available for inspection by a prospective complainant, his/her representative, or a Hearing Officer.

The decision of the Hearing Officer shall be binding on the Authority, which shall take all action, or refrain from any action, necessary to carry out the decision, unless the members of the Authority determine within a reasonable time and promptly notify the complainant of their determination that:

1. the grievance does not concern Authority action or failure to act in accordance with or involving complainant's lease or Authority regulations, which adversely affect the complainant's rights, duties, welfare or status, or the grievance embraces or the decision awards damages for an alleged cause of action against the Authority for damages for injuries to real or personal property or for destruction thereof, or for damages for personal injury, alleged to have been sustained by reason of the negligence of, or by the creation or maintenance of a nuisance by the Authority, or any member, officer, employee or agent thereof, embraced within Section 157 of the New York State Public Housing Law or Section 50-e of the General Municipal Law, or any matter which does not directly concern an Authority action or failure to act in accordance with or involving complainant's lease or Authority regulations; OR

2. 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 Authority.

A decision by the Hearing Officer or the members of the Authority in favor of the Authority, 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.

## 12. **NOTICE OF NON-PAYMENT PROCEEDINGS**

If a tenant has requested a hearing on a complaint involving non-payment of rent and the Hearing Officer upholds the Authority's proposed commencement of a non-payment dispossession proceeding, the Authority shall not commence such proceeding until it has served a notice to the tenant requiring that he/she pay the rent due or vacate the premises and that in the event that the tenant fails to do so a dispossession proceeding will be commenced. The notice must be in writing and may not be issued until the decision of the Hearing Officer has been mailed or delivered to the tenant.