



## **FAYETTE COUNTY HOUSING AUTHORITY**

### **Public Housing Tenant Grievance Procedure**

#### **I. PURPOSE**

This Tenant Grievance Procedure has been adopted to provide a forum and procedure for tenants to seek just, effective, and efficient settlement of grievances against actions or decisions of the Fayette County Housing Authority ("the Authority").

#### **II. GOVERNING LAW**

The law governing this tenant administrative grievance procedure is section 6(k) of the U.S. Housing Act of 1937 [42 U.S.C. §1437d (k) and subpart B of 24 CFR part 966 (24 CFR §966.50 - §966.57)].

#### **III. APPLICABILITY**

In accordance with applicable federal regulations, this grievance procedure shall apply to all Tenant grievances (as defined in Section IV below) subject to the exceptions listed below.

- A. This grievance procedure is not applicable to disputes between Tenants not involving the Authority or to class grievances involving Tenant groups.
- B. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between Tenants, or groups of Tenants, and the Authority or its' Board of Commissioners.
- C. HUD has issued a due process determination, finding that the law of the Commonwealth of Pennsylvania requires that tenants be given the opportunity for a hearing in court that provides the basic elements of due process (as defined in §966.53(c) - See Section IV below) before eviction from a dwelling unit. Therefore, the Authority will exclude from this tenant administrative grievance procedure any grievance concerning termination of tenancy or eviction based upon a tenant, occupant or guest involvement in the following:
  - 1. Any violent criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the Authority, or neighbors of the property,
  - 2. Any drug-related criminal activity on or off the premises,
  - 3. Any felony committed by a family member.

#### **IV. DEFINITIONS**

The following definitions of terms shall be applicable to this grievance procedure:

- A. FCHA: FCHA or Authority shall mean the Fayette County Housing Authority.
- B. Business Days: Monday through Friday of each week, except for legal holidays recognized by the Authority.
- C. CFR: The Code of Federal Regulations, which contains the federal regulations requiring this grievance procedure.
- D. Complainant: Complainant shall mean any tenant whose grievance is presented to the FCHA in accordance with 24 CFR part 966 et. Seq. and Section VI of this procedure.
- E. Drug-related criminal activity: The illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute, or use a controlled substance, as defined in sec. 102 of the Controlled Substances Act (21 U.S.C. sec. 802) as from time to time amended.
- F. Elements of due process: An eviction action or termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - 1. Adequate notice to the Tenant on the grounds for terminating the tenancy and for eviction,
  - 2. Right of the Tenant to be represented by counsel,
  - 3. Opportunity for the Tenant to refute the evidence presented by the Authority, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense, that the Tenant may have.
  - 4. A decision on the merits.
- G. Eviction: Forcing an occupant of a dwelling unit to move out of such unit through the legal process prescribed by the laws of the Commonwealth of Pennsylvania.
- H. Grievance: Any dispute that a Tenant may have with respect to an action or a failure to act by the Authority in accordance with the individual Tenant's lease or Housing Authority policies and procedures that adversely affects the individual Tenant's rights, duties, welfare or status.
- I. Hearing Officer: A person selected in accordance with 24 CFR §966.55 and this grievance procedure to hear grievances and render decisions with respect thereto.
- J. HUD: The United States Department of Housing and Urban Development.
- K. Notice: As used herein, the term notice shall, unless otherwise specifically provided, mean written notice, or such other notice allowed under the Lease.
- L. Hearing: A hearing that includes only the hearing officer, a Housing Authority representative, the resident, resident's representative, and all witnesses permitted by the Hearing Officer. All hearings shall be private unless the resident requests a public hearing in writing.

- M. Public hearing: A hearing that is open to all persons who desire to attend the hearing. A public hearing must be requested in writing.
- N. Tenant: The adult person (or persons) other than a live-in aide:
  - 1. Who resides in the unit and who executed the lease with the Authority as lessee of the dwelling unit, or, if no such persons resides in the unit,
  - 2. The person who resides in the unit, and who is the remaining head of the household of the Tenant family residing in the dwelling unit.

## **V. PROCEDURE PART OF RESIDENTIAL LEASE AGREEMENT**

This tenant administrative grievance procedure is provided as an attachment to and incorporated by reference into all Residential Lease Agreements between Tenants and the Authority at all public housing developments.

## **VI. INFORMAL SETTLEMENT OF GRIEVANCES**

A tenant must begin the grievance process by requesting and attending an informal settlement conference with the Authority to discuss whether the grievance can be settled without a hearing. The following procedures apply to a request for an informal conference under this tenant administrative grievance procedure:

- A. **Initial Presentation:** Any request for an informal conference must be personally presented, either orally or in writing to the manager in the management office of the development in which the tenant resides or to FCHA's main office. The request must be presented within five (5) business days after the event giving rise to the grievance. Each tenant requesting an informal conference shall be given a receipt showing proof of the request (see Exhibit "II").
- B. **Informal Conference:** If the informal conference cannot occur at the time the request is initially presented by the tenant, then the tenant will be promptly notified in writing of the time and place for the informal conference. The informal conference will be held no later than (10) business days after the initial presentation of the request.
- C. **Written Summary:** The Authority shall provide a written summary of the informal discussion to the tenant within five (5) business days after the informal conference. The summary shall be in writing and shall specify the names of the participants in the discussion, the date of the discussion(s), the nature of the proposed disposition of the grievance, and the specific reasons for such disposition. This written summary shall include the procedures by which the tenant may obtain a formal hearing. A copy of the written summary shall be placed in the tenant's file. This copy shall serve as proof that the tenant did participate in the informal conference.
- D. **Failure to Attend Informal Conference:** A tenant who does not attend an informal conference shall be considered to have waived the right to an informal conference and is not entitled to a formal hearing absent a showing of good cause why he/she failed to attend the informal conference. In such an event, the Authority shall provide a notice to the tenant that shall specify the procedures by which the tenant

may request a formal hearing. The Hearing Officer shall make the determination whether the tenant shows good cause for missing the informal conference before proceeding with the formal hearing.

- E. **Failure to Request Hearing:** If the tenant fails to request a formal hearing within five (5) business days after receiving the written summary of the informal conference, the Authority's decision rendered at the informal conference becomes final and the Authority is no longer obligated to offer the tenant a formal hearing. The tenant's failure to request a formal grievance hearing does not constitute a waiver to contest the Authority's action in Court.

## **VII. SELECTION OF HEARING OFFICER**

The Authority has retained a Solicitor to preside at all informal and formal hearings.

## **VIII. SCHEDULING OF FORMAL HEARINGS**

A tenant does not have a right to a formal grievance hearing unless the tenant has satisfied the prerequisites set forth below.

- A. The tenant must request a formal hearing in writing within five (5) business days after receiving the written summary of the informal conference.
- B. The tenant must complete the informal conference procedure, or the Hearing Officer must determine that a tenant has good cause for failing to proceed in accordance with procedures above in Section VI concerning informal conferences.

## **IX. ESCROW DEPOSIT REQUIREMENT**

If the matter involves the amount of rent that the Authority claims is due under the tenant's lease, the tenant must pay to the Authority an amount equal to the amount due and payable as of the first day of the month immediately preceding the month in which the complained of act or failure to pay occurred. The monies paid to the Authority by the tenant shall be placed in an escrow account. And, in the case of situations in which hearings are, for any reason delayed, the tenant shall thereafter, deposit the same amount of the monthly rent in an escrow account monthly until the complaint is resolved by decision of the Hearing Officer or his/her designee. The tenant's failure to make payments into escrow, unless waived by the Authority in writing, shall terminate the tenant's grievance. No waiver will be given by the Authority except in cases of extreme and undue hardship to the tenant when the tenant is paying minimum rent, determined in the sole and absolute discretion of the Authority. If the amount of rent paid into escrow by tenant is proven to be equal to or less than rent that is owed by the tenant to FCHA, FCHA may apply the money paid in escrow to the tenant's account. If the amount of rent paid into escrow is proven to be more than rent that is owed by the tenant to FCHA, FCHA shall refund the overage amount paid in escrow to tenant.

Tenants subject to the Minimum Rent are not required to make escrow payments to qualify for a Grievance Hearing.

## **X. PROCEDURES GOVERNING HEARINGS**

### **A. Fair Hearing**

The hearings shall be held before a Hearing Officer as described above in Section VIII. The tenant shall be afforded a fair hearing that shall include:

1. On or before five (5) days prior to the date of the Hearing, the opportunity to examine any non-privileged Authority documents, including records and regulations that are directly relevant to the hearing. The tenant will be afforded the opportunity to review and copy all records maintained in his/her individual file, provided the request is made on or before five (5) days prior to the Hearing. The tenant must request the production of such documents in writing to the FCHA's Central Office. The tenant will be allowed to copy any such document at the tenant's expense. If the Authority does not make the document available for examination upon request by the tenant, the Authority may not rely on such documents at the grievance hearing.
2. The right to be represented by counsel or other person chosen as the tenant's representative and to have such person make statements on the tenant's behalf, provided that such designation is made in writing to the Hearing Officer, or the Hearing Officer's designee, on or before five (5) days prior to the Hearing.
3. The right to a private hearing unless the tenant requests a public hearing.
4. The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the Authority and to confront and cross examine all witnesses upon whose testimony or information the Authority or its management relies, and
5. The right to a written decision based solely and exclusively upon the facts and statements presented at the hearing.

### **B. Prior Decision in Same Matter**

The Hearing Officer may render a decision without proceeding with the hearing if they determine that the issue has been previously decided in another proceeding.

### **C. Failure to Appear**

If the Tenant or the Authority fails to appear at a scheduled hearing, the Hearing Officer may make a determination to postpone the hearing or may make a determination that the party failing to attend has waived the right to a hearing and render a decision in the tenant's absence. In such an event, the Hearing Officer shall notify the Tenant and the Authority of the determination.

The failure to attend a grievance hearing shall not constitute a waiver of any right for which the tenant may have to contest the Authority's disposition of the grievance in an appropriate judicial proceeding.

D. Required Showing of Entitlement to Relief

At the hearing, the Tenant must first make a showing of an entitlement to the relief sought and thereafter, if such a showing is made, the Authority must sustain the burden of justifying the Authority's action or failure to act against which the complaint is directed.

The Tenant and Authority may each present evidence. The evidence may consist of documents or witnesses. The tenant may testify. The tenant and the Authority have the right to question each other's witnesses.

E. Informality of Hearing.

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 reviewed and considered without regard to admissibility under the rules of evidence applicable to a judicial proceeding.

F. Orderly Conduct Required

The Hearing Officer shall require the Authority, the tenant, counsel, and other participants or spectators, to conduct themselves in an orderly fashion, and respectful manner. Failure to comply with the directions of the Hearing Officer to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

G. Transcript of Hearing

The Tenant or the Authority may arrange in advance, and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

**XI. DECISION OF THE HEARING OFFICER**

At or subsequent to the completion of the formal grievance hearing, the Officer shall make a determination as to the merits of the grievance and the following provisions shall govern:

A. Written Decision

The Hearing Officer shall prepare a written decision, together with the reasons for the decision within ten (10) business days after the completion of the hearing.

1. A copy of the decision shall be sent to the tenant and to the Authority. The Authority shall retain a copy of the decision in the tenant's file.
2. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the Authority and made available for inspection by any prospective tenant, his/her representative, or the Hearing Officer.

B. Binding Effect

The written decision of the Hearing Officer shall be binding upon the Authority, which shall take all actions, or refrain from any actions necessary to carry out the decision unless the Authority's Board of Commissioners determines within a reasonable time, and promptly notifies the complainant of its determination, that:

1. the grievance does not concern the Authority's action or failure to act in accordance or involving the tenant's lease or the Authority's policies and procedures that adversely affect the Tenant's rights, duties, welfare or status, 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.

C. Continuing Right of Tenant to Judicial Proceedings

A decision by the Hearing Officer or Board of Commissioners in favor of the Authority or that denies the relief requested by the tenant in whole or in part, shall not constitute a waiver of, nor effect in any way the rights of the Tenant to a trial or judicial review in any judicial proceedings, that may thereafter be brought in the matter.

## **XII. NOTICES**

All notices under this grievance procedure shall be deemed delivered: (1) upon personal service thereof upon the tenant or an adult member of the tenant's household, (2) upon the date receipted for or refused by the addressee, in the case of certified or registered U.S. Mail, or (3) on the second day after the deposit thereof for mailing, postage prepaid, with the U.S. Postal Service, if mailed by first class mail other than certified or registered mail.

## **XII. REASONABLE ACCOMODATION OF PERSONS WITH DISABILITIES**

The Authority shall provide reasonable accommodation for persons with disabilities to allow them to participate in grievance hearings, which may include qualified sign language interpreters, readers, accessible locations, attendants, etc., upon request.

If a Tenant is visually impaired or does not read, any notice hereunder delivered to such Tenant shall be in an accessible format. If the Tenant does not read English, the notice shall be provided either orally or written in the language most familiar to the Tenant.

## **XIII. MODIFICATION**

This grievance procedure may not be amended or modified except by adoption of a resolution supported by a majority of the Board of Commissioners of the Authority, present at a regular meeting or a special meeting called for such purposes. Further, in addition to the foregoing, any changes proposed to be made to this grievance procedure must provide for at least (45) days advance notice to tenants and resident organizations, setting forth the proposed changes and providing an opportunity to present written comments. The comments submitted shall be considered by the Authority before final adoption of any amendments hereto.

#### **XIV. MISCELLANEOUS**

**A. Captions:**

Captions or paragraph headings set forth in this grievance procedure are for convenience of reference only and shall not be construed or interpreted to affect the substance of the paragraphs or sections so captioned.

**B. Concurrent Notice:**

If a Tenant has filed a request for grievance hearing hereunder in a case involving the Authority's notice of termination of tenancy, the tenant should be aware that the State law notice to vacate and the notice of termination of tenancy required under Federal law do not run concurrently. Therefore, if the Hearing Officer upholds the Authority's action to terminate the tenancy, the Authority may commence an eviction action in court upon the sooner of, the expiration of the date for termination of tenancy and vacation of premises stated in the notice of termination delivered to tenant, or the delivery of the report of decision of the Hearing Officer to tenant, but in no case before the Hearing Officer has ruled.