

WINCHESTER HOUSING AUTHORITY
13 WESTLEY STREET
WINCHESTER, MA 01890

STATE-AIDED
GRIEVANCE POLICY

Adopted: 6/14/2022
Effective: 7/1/2022

(1) **GENERAL OVERVIEW**

- (A) State regulations 760 C.M.R. 6:08 require each Local Housing Authority (LHA) to have a grievance procedure for the prompt and reliable determination of grievances. The adopted procedures shall be available to all state aided public housing tenants program participants in the state aided rental assistance programs and to persons who have filed an appeal pursuant to 760 C.M.R.8:00 (Privacy and Confidentiality).
- (B) A grievance is defined as an allegation that the WHA or WHA employee has acted or failed to act in accordance with any statute, regulation, or rule regarding the condition of tenancy or the program and that the alleged action or failure to act has adversely affected the status, right, duties or welfare of the grievant and or a household member.
- (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 WHA 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 exist for terminating a lease shall be initiated by a tenant in writing and shall be mailed or delivered to the WHA at its main office within seven (7) days after a notice of lease termination has been given to the tenant by the WHA.
- (B) A grievance regarding termination of participation in the MRVP, AHVP or any other state aided rental assistance program shall be initiated by a program participant in writing and shall be mailed or delivered to the WHA at its main office within seven (7) days after notice of program termination has been given to the program participant by the WHA.
- (C) A grievance regarding any other matter shall be initiated by a grievant in writing and shall be mailed or delivered to the WHA at its main office fourteen (14) days after the date on which the grievance first became aware or should have become aware of the subject matter of the grievance.
- (D) If a tenant files a grievance as to the amount of a redetermination rent, the grievance shall be filed within fourteen (14) days of the grievant having received, the WHA's notice of the redetermination rent. The tenant shall continue to pay the rent then in effect (unless the redetermination rent is lower) until disposition of the grievance. Following disposition of the grievance, the tenant shall forthwith pay any additional amounts determined to have been due, but not paid since the effective date set out in the notice of determined rent or the WHA shall credit the tenant with any amounts paid but determined not to have been due. In the absence of a grievance, the determined rent shall be paid beginning on its effective date.
- (E) The WHA shall permit additional time for initiation of a grievance if the WHA 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 WHA.

(3) **Informal Settlement Conference**

- (A) Promptly after the initiation of a grievance, unless otherwise provided, the WHA'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 WHA 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 WHA. If a matter 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) This grievance procedure requires a hearing and determination of a matter subject to the procedure **by a single hearing officer**. Under this procedure, the WHA shall from time to time nominate one or more persons to serve as hearing officer(s). The name(s) of the nominee(s) will be forwarded to the LTO for conference.

Hearing officer(s) shall be appointed to serve for a term not to exceed seven years.

- (B) Concerning matters of evictions, **no grievance** hearing shall be requested or held under any of the circumstances specified in Items 1 - 8 in paragraph 4 of M.G.L. c. 121B. Section 32 **Including the following circumstances:**

- (1) In the event of non-payment of rent;
- (2) In the event the WHA has reason to believe that the tenant or household member,
 - (a) has unlawfully caused serious physical harm to another tenant or an employee of the WHA or any other person lawfully on the WHA's property;
 - (b) has unlawfully threatened to cause serious physical harm to any member of a tenant household or a WHA employee or any person lawfully on the WHA's property;
 - (c) has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or of the WHA or of any person lawfully on the WHA'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 WHA property in violation of M.G.L. c.269. section 10;
 - (e) has unlawfully possessed or used an explosive or incendiary device on or adjacent to WHA property or has otherwise violated M.G.L. c.266 Sections 101, 102, 102(A) or 102(B);
 - (f) has unlawfully possessed with the intent to distribute a class A, B, or C controlled substance, as defined in M.G.L. c. 94C. Section 31 on or adjacent to the WHA'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, a WHA employee or any person lawfully on the WHA's property or
 - (h) has engaged in behavior, which would be cause for voiding the lease pursuant to the provisions of M.G.L. c.139. Section 19 or

- (3) In the event the WHA 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 (2) and the tenant knew before and 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) A grievance hearing regarding whether good cause exists for terminating a lease shall be scheduled within fourteen (14) days or as soon as reasonably practical after the date on which the WHA receives the grievance. The WHA shall schedule such a hearing on a date within thirty (30) days from the date of a request for a grievance hearing. The hearing shall be scheduled at least fifteen (15) days prior to the date of termination and shall give written notice of not less than seven (7) days of the time and place to the grievant and his or her representative (if any). Any additional reason(s) for termination of the lease which might have arisen subsequent to the date of the notice of termination, shall be considered so long as the WHA has given notice to tenant as to the additional reason not less than three (3) days before the hearing, or, if a reason for eviction shall arise within such three (3) day period, a subsequent session of the hearing shall be scheduled on not less than three (3) days' notice to consider such reason. In cases where a tenant is entitled to a grievance hearing and has made a timely request, the WHA shall not file a summary process summons and complaint pending the hearing and a decision or other resolution in the WHA's favor.
- (B) A hearing of a grievance regarding some other issue shall be scheduled as soon as reasonably convenient following receipt of a grievance. The WHA 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).
- (C) The WHA or the hearing officer may reschedule a hearing by agreement or upon a showing by the grievant or by the WHA that rescheduling is reasonably necessary.

(6) **Pre-Hearing Examination of Relevant Documents**

- (A) The grievant or his or her representative, after providing the WHA with reasonable notice, shall have the right to examine the WHA documents, which are directly relevant to the grievance. Following a timely request, the WHA shall provide copies of such documents to grievant and, for good cause (including financial hardship), may waive the charge for the copies.

(7) **Persons Entitled to be Present**

- (A) The grievance hearing shall be private unless the grievant requests in writing that it be open to the public. If the grievant requests an open hearing, the hearing shall be open to the public unless the hearing officer denies the grievant's request for a good reason. The WHA and the grievant shall be entitled to specify a reasonable number of persons who may be present at a private hearing on behalf of each party. The hearing officer shall decide a challenge to the presence of any such person. At the hearing the WHA and the grievant may be represented by a lawyer or by a non-lawyer.

All persons present at the hearing shall conduct themselves in an orderly manner, failing which, the hearing officer may order any such person or persons to be excluded from the hearing. If the grievant misbehaves at the hearing, the hearing officer may take other appropriate measures to deal with the misbehavior, including dismissing the grievance.

(8) Procedures at Grievance Hearings

- (A) The hearing officer shall conduct the grievance hearing in a fair manner without undue delay. The hearing officer shall begin the hearing by defining the issues to be decided by the hearing officer. Thereafter, relevant information, including testimony of witnesses and written material shall be received regarding such issues. Both the grievant and the WHA 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 hearing officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and WHA rules and policies. The hearing officer may request the WHA 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.

(9) Written Decision: Effect of Decision

- (A) Within fourteen (14) days following the hearing or as soon thereafter as reasonably possible the hearing officer shall provide the WHA 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 based on the evidence at the grievance hearing and such additional information as may have been requested by the hearing officer and shared with the grievant. The WHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative. A copy of the decision (with names and personal identifiers deleted) shall be maintained at the WHA for public inspection.

(10) Review by the WHA's Board

- (A) In cases where the hearing officer's decision concerns whether good cause exists for terminating a lease there shall be no review by the WHA's Board. In other cases if the grievant or the WHA believes that (i) the decision of the hearing officer is not supported by the facts; (ii) the decision does not correctly apply applicable laws, regulations rules and or policies; or (iii) the subject matter is not grievable, within fourteen (14) days of mailing or other decision, they may request in writing a review of the decision by the WHA's Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the WHA and grievant to make oral presentations and submit documentation. The Board may also permit the hearing officer to make a presentation. 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

- (A) In the event that the WHA's Board shall make a material change in the decision of the hearing officer, upon written request of the grievant made within fourteen (14) days of mailing or other delivery of the decision, the Department shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board.

(12) Effect of a Decision on a Grievance

- (A) The decision on a grievance shall be binding between the WHA 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 a decision on a grievance determines that good cause exists for terminating a lease the WHA may thereupon file summary process summons and complaint and there shall be no review by the Board or the Department. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court. As between the WHA and any person who was not grievant, the decision on a grievance shall have no binding effect.