



PORTSMOUTH HOUSING AUTHORITY

GRIEVANCE PROCEDURES

1. PURPOSE AND APPLICABILITY. These Grievance Procedures have been adopted to provide a forum and procedure for tenants to seek the just, effective and efficient settlement of “grievances” against the Portsmouth Housing Authority (“PHA”). A “grievance” means any dispute which a tenant (the “Tenant”) may have with respect to an action or a failure to act by PHA in accordance with the Tenant’s lease or PHA rules, policies, or regulations which adversely affects the Tenant’s rights, duties, welfare or status. Examples of grievances may include, but are not limited to, lease termination/eviction, rent increase, unit transfer, or repair charges. *Notwithstanding anything in these Grievance Procedures to the contrary, these Grievance Procedures shall not apply to any lease termination or eviction that involves (i) any activity that threatens the health, safety or right of peaceful enjoyment of the premises of other residents or PHA employees, or (ii) any violent or drug-related criminal activity on or off the Property.*

2. INFORMAL SETTLEMENT OF GRIEVANCES.

A. General. A prerequisite of requesting and obtaining a hearing with respect to any grievance is that the Tenant first have presented the grievance to PHA so that the grievance can be discussed and/or considered informally and an effort made to settle the grievance without the need for a hearing.

B. Presentation of Grievance by Tenant/Informal Meeting. The Tenant must present their grievance to PHA within *five (5) business days* (weekdays, excluding federal or state holidays) after the occurrence of the event giving rise to the grievance (e.g., receipt of notice of lease termination/eviction, rent increase, unit transfer, repair charges, etc.). The grievance may either be presented in writing (i.e., the Tenant may deliver a letter to PHA setting forth their position, in which case no informal meeting shall be conducted unless specifically requested by the Tenant) or orally (i.e., the Tenant may come in to the PHA management office during normal business hours to discuss their grievance with the appropriate member of the PHA staff). If the Tenant comes to the PHA office to present their grievance orally and the appropriate member of the PHA staff is not available, PHA shall schedule the informal meeting as soon as possible, and shall give written notice to the tenant of the time and place for the informal meeting.

C. Written Summary of Meeting. Within *five (5) business days* of the informal meeting (or the date of the presentation of the grievance in writing, if the grievance is presented in writing and no informal meeting is held), a written summary of the informal meeting (or of the written grievance) shall be prepared by PHA and a copy shall be delivered to the Tenant. The summary shall, as applicable, specify the names of the participants in the discussion, the date of the discussion, the nature of the proposed disposition of the grievance, and

the specific reasons for such disposition. This written summary will also specify the procedures by which the Tenant may obtain a formal hearing if the Tenant is not satisfied by the proposed disposition of the grievance. A copy of the written summary shall also be placed in Tenant's file.

3. FORMAL GRIEVANCE HEARING

A. Request for Formal Hearing.

(i) *Prerequisite of Use of Informal Procedures.* In general, a Tenant shall have no right to a formal hearing unless the Tenant has first presented the grievance to the PHA for informal discussion and/or consideration as provided above in Section 2 above. If the Tenant has not presented the grievance in that manner, the Tenant may nonetheless request a formal hearing and ask the hearing officer to waive that requirement. The determination as to whether to waive that requirement shall be in the hearing officer's sole discretion.

(ii) *Timing and Substance of Request.* If the Tenant is not satisfied with the results of the informal settlement procedures, the Tenant must submit a written request for a formal hearing to PHA's management office no later than **five (5) business days** after the date the Tenant receives the summary of discussion of the informal settlement procedures (if the Tenant has not presented the grievance for informal discussion and/or consideration as required by Section 2 but still wants a formal hearing and intends to ask the hearing officer to waive that requirement, the Tenant must submit the request within ten (10) business days after the occurrence of the event giving rise to the grievance). The Tenant's written request must specify: (a) the reasons for the grievance and the action or relief sought by the Tenant; (b) the times at which the Tenant will be available for a hearing during the next ten business days; and (c) if the Tenant has failed to attend an informal discussion conference, a request that the hearing officer waive this requirement.

(iii) *Requirement of Escrow Payment for Matters Involving Non-Payment of Rent.* If the matter involves the termination of the Tenant's lease based on a failure to pay rent for the fourth time in any 12-month period, then the Tenant shall not have a right to a formal hearing unless, by the date the request for a hearing is made, the Tenant has paid to PHA an amount equal to the amount of rent due and payable as of the first of the month preceding the month in which the complained of act or failure to act took place. The Tenant shall further pay to PHA the same amount of the monthly rent each month until the formal hearing is conducted and a written decision issued by the hearing officer. All sums received by PHA shall be held in an escrow account until the issuance of the written decision of the hearing officer after the hearing. These requirements may be waived in writing by PHA 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 Tenant may have to contest PHA's disposition of the grievance in any appropriate judicial proceeding.

(iv) *Failure to Request a Hearing.* If the Tenant fails to timely request a formal hearing, PHA's decision set forth in the written summary (or other decision, if the Tenant did not present the grievance for informal consideration and there is therefore no written summary) shall become final and the Tenant shall not have a right to a formal hearing. The Tenant's failure to timely request a formal hearing, however, shall not constitute a waiver by the Tenant of any right afterwards to contest PHA's action in an appropriate judicial proceeding.

B. Selection of Hearing Officer. Each formal hearing shall be conducted by a single impartial hearing officer. The Executive Director of PHA shall serve as the hearing officer unless the Executive Director either made or approved the decision or action that is the basis for the grievance, or otherwise is unavailable to so serve or choose not to so serve. If the Executive Director made or approved the decision or action that is the basis for the grievance, the Executive Director shall appoint one of the following persons to serve as the hearing officer: a present or former member of PHA's Board of Commissioners, the executive director (or equivalent) of any New Hampshire non-profit housing organization (including another New Hampshire public housing agency), or any member of the senior management of New Hampshire Housing Finance Authority or any local housing management company. If the Executive Director is otherwise unavailable to serve or chooses not to serve, the Executive Director shall appoint one of the following persons to serve as the hearing officer: a member of PHA's Board of Commissioners, a member of the PHA management team, or a person on any list of eligible hearing officers that has been distributed to all tenants and tenant organization(s) for comment at least 30 days before (in no event shall any hearing officer be a person who made or approved - or whose superior has made or approved - the decision or action that is the basis for the grievance).

C. Timing and Notice of Hearing. So long as the Tenant has met all of the prerequisites to a hearing as set forth above, a hearing shall be scheduled by the hearing officer for a time and place reasonably convenient to both the Tenant and PHA (the hearing officer shall refer to the available dates listed in the Tenant's hearing request, if any), but in no event shall the hearing be scheduled later than the *tenth (10th) business day* after the date on which the Tenant made a hearing request. A written notice specifying the time, place, and the procedures governing the hearing shall be delivered to the Tenant at least five (5) business days prior to the hearing.

D. Procedures Governing Hearings

(i) *Fair Hearing Procedures.* The Tenant shall be afforded a fair hearing, which, in accordance with HUD Regulations, shall include the following: (a) The opportunity to examine before the hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. (The Tenant will be allowed to copy any such document at the Tenant's expense.) If PHA does not make a document available for examination upon request by the Tenant, PHA may not rely on such document at the grievance hearing. (b) 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. (c) The right to a private hearing unless the Tenant requests a public hearing. (d) The right to present evidence and arguments in support of the Tenant's complaint, to controvert evidence relied on by PHA and to confront and cross-examine all witnesses upon whose testimony or information PHA relies. (e) A decision based solely and exclusively upon the facts presented at the hearing.

(ii) *Other Hearing Procedures.* 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. At the hearing, the Tenant must first make a showing of an entitlement to the relief sought and afterwards PHA must sustain the burden of justifying PHA's action or failure to act against which the complaint is directed. The hearing officer or hearing panel shall require PHA, the Tenant, counsel, and other participants or

spectators, to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer or hearing panel 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. The Tenant or PHA may arrange in advance, and at the expense of the party making the arrangement, for a transcript of the hearing. PHA must provide reasonable accommodation for persons with disabilities to participate in grievance hearings. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

(iii) *Prior Decision In Same Matter.* Notwithstanding anything in these Grievance Procedures to the contrary, the hearing officer may render a decision without proceeding with the hearing if they determine that the same issue has been previously decided in another proceeding.

(iv) *Failure to Appear.* If the Tenant fails 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 may make a determination that the Tenant has waived the right to a hearing. In such event, the hearing officer or hearing panel shall notify the Tenant and PHA of the determination. The failure to attend a grievance hearing shall not, however, constitute a waiver of any right which the Tenant may have to contest PHA's disposition of the grievance in an appropriate judicial proceeding.

E. Decision of Hearing Officer. The hearing officer shall prepare written decision, together with the reasons for the decision, within *ten (10) business days* after the completion of the hearing. A copy of the decision shall be sent to the Tenant and PHA. PHA shall retain a copy of the decision in the Complainant's tenant folder. (A copy of the decision, with all names and identifying references deleted, shall also be kept by PHA and made available to any future aggrieved tenant or their representative.) The written decision of the hearing officer shall be binding upon PHA, except as provided in the HUD Regulations. If the written decision of the hearing officer denies the relief requested by the Tenant, in whole or in part, such denial shall not constitute a waiver of, nor affect in any manner whatever, any rights of the Tenant to a trial or judicial review in any judicial proceedings which may afterwards be brought in the matter.

4. NOTICES. All notices and communications permitted or required by these Grievance Procedures shall be in writing. Notices to be delivered to the Tenant shall be delivered either by (i) delivering in hand to the Tenant of an adult member of Tenant's household (in which case delivery shall be deemed to occur on such date), or (ii) sending by first class mail, addressed to the Tenant (in which case delivery shall be deemed to occur on the second day after deposit with the U.S. Postal Service). Notices to be delivered to PHA shall be delivered either by (i) delivering in hand to a member of the PHA staff at the PHA management office during normal business hours (in which delivery shall be deemed to occur on such date), or (ii) sending by first class mail, addressed to PHA (in which case delivery shall be deemed to occur when actually received by PHA).

5. MISCELLANEOUS

A. Defined Terms. Any capitalized term that is not defined in these Grievance Procedures shall have the meaning given in the Tenant's lease.

B. Concurrent Notices in Eviction Cases; Timing of Lease Termination and/or Quit Date. In the case of lease terminations/evictions, the notice to quit required by state law may be combined with, and run concurrently with, the written notice of lease termination required under the lease and the HUD Regulations (which written termination notice will also include notice of the right to a hearing - where such right exists - in accordance with these Grievance Procedures). In the event that the Tenant has timely requested and met all of the prerequisites for a hearing in accordance with these Grievance Procedures, the quit date in any notice to quit and the termination date in any notice of lease termination shall be deemed extended (if necessary) until the date on which a written decision is issued by the hearing officer, and PHA shall not file any landlord-tenant writ until and unless a written decision upholding the lease termination and/or eviction is issued by the hearing officer.

C. Housing Act and HUD Regulations. These Grievance Procedures are adopted under and intended to comply with the Housing Act and the HUD Regulations, and these Grievance Procedures shall be subject to the Housing Act and the HUD Regulations. To the extent that any provision in these Grievance Procedures conflicts with the Housing Act and the HUD Regulations, the provisions of the latter shall control. Further, any rights, obligations or other requirements in the Housing Act or the HUD Regulations not set forth in these Grievance Procedures shall be deemed incorporated by reference and be a part of these Grievance Procedures.

Informal Review for an Applicant Family

An applicant may ask the Portsmouth Housing Authority (PHA) for an informal review of the Housing Authority's decision to remove them from the public housing or housing choice voucher waitlists within five (5) days after receiving notification of the decision. In an informal review, the applicant may present oral or written objections to the Housing Authority's decision. The review will be conducted by a PHA staff member who was not involved in the original decision to remove the applicant from the waitlist.

Informal reviews are not required for established policies and procedures as outlined in PHA's Admissions and Continued Occupancy Plan and Housing Choice Voucher Administrative Plan.

The review officer will have ten (10) working days to provide written notification to the applicant of the final decision. All documentation will be retained in the applicant family's file.