

## APPENDIX VIII

### **NBHA GRIEVANCE PROCEDURE**

#### **1. Purpose and Scope**

The purpose of these procedures and requirements is to set forth the requirements, standards and criteria for Tenants of the Housing Authority (NBHA) to be afforded an opportunity for a hearing of the Tenant disputes within reasonable time any HA action or failure to act involving the Tenant's lease with the PHA or PHA regulations which adversely affect the individual Tenant's rights, duties, welfare, or status. The grievance procedure provided herein shall be incorporated in each individual Tenant's lease.

#### **2. Applicability**

- A. This grievance procedure shall be applicable to all individual grievances as defined herein under the heading "definitions."
- B. This grievance procedure shall not be applicable to disputes between Tenants not involving the PHA or to class grievances. This procedure is not intended as a forum for initiating or negotiating policy changes between a group of Tenants and the PHA's Board of Commissioners.
- C. This grievance procedure shall not apply to any grievance concerning a termination of tenancy or eviction that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of NBHA or any drug related criminal activity on or near the Authority's premises.

#### **3. Definitions**

The following definitions are applicable to the grievance procedures and requirements herein:

- A. "PHA" "NBHA" means the New Braunfels Housing Authority.
- B. "Tenant" shall mean any lessee or the remaining head of household of any Tenant Family residing in housing accommodations covered in the lease and procedures.
- C. "Grievance" shall mean any dispute which a Tenant may have with respect to PHA action or failure to act in accordance with the individual Tenant's lease or PHA regulations which adversely affect the individual Tenant, Tenant's rights, duties, welfare or status.
- D. "Complaint" shall mean any Tenant whose grievance is presented to the PHA in accordance with the paragraphs headed - "Informal Settlement of Grievance and Procedure to Obtain a Hearing" herein.

- E. "Hearing Officer" shall mean a person selected in accordance with paragraph 6 B(1) below.

#### **4. Informal Settlement of Grievance**

Any grievance shall be in writing, (no telephone calls accepted) to the PHA office of management so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within ten business (10) days of the date of discussion and one copy shall be given to the Tenant and one retained for the Tenant's file. The summary shall specify the following:

- A. The names of the participants
- B. Date and time of the "meeting"
- C. Nature of the complaint and proposed disposition of the complaint and specific reasons therefor
- D. The right of the complainant to a hearing: and
- E. The procedure by which a hearing may be obtained.

#### **5. Selection of Hearing Officer**

A grievance hearing shall be conducted by an impartial person who is an employee of the NBHA. Normally, this will be the Quality Control to the Executive Director but in the absence of this person may be another employee of the PHA impartial to the matter and who is not supervised by the person who made the decision which is being grieved.

#### **6. Procedure to Obtain a Hearing**

##### **A. Request for Hearing**

The complainant shall submit a written request for a hearing to the PHA within ten (10) business days after receipt of the summary of discussion pursuant to paragraph 4 above. The written request shall specify:

1. The reason for the grievance: and
2. The action or relief sought

##### **B. Failure to Request a Hearing**

If the complainant does not request a hearing in accordance with paragraph 6A then the PHA's disposition of the grievance under "The Informal Settlement of Grievance" shall become final. If the client did not respond at all and did not have an Informal Settlement Discussion the PHA shall proceed. This does not constitute a waiver by the complainant of his rights thereafter to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding.

##### **C. Hearing Prerequisite**

All grievance requests shall be in writing pursuant to the informal procedure prescribed in paragraph 4 above as a condition precedent to a hearing under this paragraph, provided, that if the complaint shall show good cause why he/she failed to proceed in accordance with paragraph 6A to the hearing office the provisions of this sub-sector may be waived by the hearing officer.

#### **D. Escrow Deposit**

Before a hearing is scheduled in any grievance involving the amount of rent which the PHA claims is due, the complainant shall pay to the PHA an amount equal to the amount 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 deposit the same amount of the rent in an escrow account monthly until the complaint is resolved by decision of the hearing officer. These requirements may be waived by the 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 the right of the complainant to contest the PHA's disposition of the grievance in any appropriate judicial proceeding.

#### **E. Scheduling of Hearing**

Upon complainant's compliance with paragraphs 6A, 6D, and 6E above, a hearing shall be scheduled by the hearing officer promptly for a time and place, which will be the administrative office of the PHA, reasonably convenient to both parties. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.

### **7. Procedures Governing the Hearing**

- A. The hearing shall be held before a hearing officer.
- B. The complainant shall be afforded a fair hearing providing the basic safe guards of due process which shall include:
  1. The opportunity to examine before the hearing and at the expenses of the complainant, to copy all documents, records, and regulations of the PHA that are relevant to the hearing. Any documents not so made available, after request by the complainant, may not be relied upon by the PHA at the hearing.
  2. The right to be represented by counsel or other persons chosen as his/her 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 his/her complaint, to controvert evidence relied on by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies: and
  5. A decision based solely and exclusively upon the facts presented at the hearing.

- C. 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.
- D. If the complainant or the PHA fail to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for not to exceed five (5) business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and the PHA shall be notified of the determination by the hearing officer provided, that a determination that the complainant has waived his/her right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.
- E. At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA actions or failure to act against which the complaint is directed.
- F. 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 and evidence applicable to judicial proceeding. The hearing officer shall require the PHA, 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 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. The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. All hearings will be recorded by the PHA. Any interested party may purchase a copy of the transcript for \$10.

## **8. Decision of the Hearing Officer**

- A. The hearing officer shall prepare a written decision, together with the reasons therefore, within ten (10) days after the date of the hearing. A written copy of the decision shall be mailed to the complainant and given to the PHA representative for the file. The PHA letter shall contain all names of those in attendance, summary of the complaint, the decision of the officer. In a separate file with all identification deleted, records shall exist of the action for inspection by a prospective complainant, his/her representative, and the hearing officer.
- B. The decision of the hearing officer shall be binding on the PHA which shall take all actions necessary to carry out the decision unless the PHA Board of Commissioners determines at the next regularly scheduled board meeting, and promptly notifies the complainant within five (5) business days thereafter, that
  - 1. The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease, or PHA regulations which adversely affect the complainant'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 requirement of the Annual Contributions Contract (ACC) between HUD and the PHA.

C. A decision by the hearing officer or by the Board of Commissioners in favor of the PHA 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.

## **9. PHA Eviction Action**

If a Tenant has requested a hearing in accordance with paragraph 6 herein on a complaint involving a PHA *Notice of Termination* of tenancy and the hearing officer upholds the PHA's action to terminate the tenancy, the PHA shall not commence an eviction action in a state or local court until it has served a *Notice to Vacate* on the tenant, and in no event, shall the *Notice to Vacate* be issued prior to the decision of the hearing officer having mailed or delivered to the complainant. Such *Notice to Vacate* must be in writing and specify that if the tenant fails to quit the premises within applicable statutory period, or on the termination date stated in the *Notice of Termination*, whichever is later, appropriate action will be brought against him/her, and he/she may be required to pay court and attorney fees.

## **10. Accommodations to Persons with Disabilities**

The PHA shall provide reasonable accommodation to persons with disabilities to participate in the hearings which may include sign language interpreters, readers, accessible locations, or attendant. If visually impaired, notice must be in accessible format.

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