

DOVER HOUSING AUTHORITY

GRIEVANCE PROCEDURES

Effective Date July 1, 2000 (updated 11/2012)

I. PURPOSE AND SCOPE

These procedures are established and shall be henceforth implemented for the purpose of assuring Tenants are afforded an opportunity for a hearing if said Tenant disputes any Dover Housing Authority action or DHA's failure to act in accordance with the lease or regulations that adversely affect the Tenant's rights, duties, welfare or status. These procedures are to be incorporated in all dwelling leases to which the provisions of CFR § 966.50-57 are applicable. Any Tenant requested grievance must be submitted in writing to DHA within 5 days of the action.

II. APPLICABILITY

- A. These grievance procedures shall be applicable (except as provided in Subsection II-C below) to all individual grievances as defined in subsection III-A below, between the Tenant and the Authority.
- B. These grievance procedures are not applicable to disputes between tenants not involving the Authority nor to class grievances. These grievance procedures are not intended to be used as a forum for initiating or negotiating policy changes between a group or groups of tenants and the Authority.
- C. Because Delaware law requires that the Tenant must be given the opportunity for a hearing in court which provides the basic elements of due process as defined in Subsection III-C before eviction from the dwelling unit, these grievance procedures shall not be applicable to a termination of tenancy or eviction that involves: (i) Any activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or by employees of the Authority, or (ii) Any drug related, criminal/violent activity on or near such premises, unless the Authority agrees to the Expedited Grievance Procedures described in Subsections V-A and V-G.

III. DEFINITIONS

For the purpose of these grievance procedures the following definitions are applicable:

- A. Grievance – shall mean a dispute, which a Tenant may have with respect to the Authority's action or failure to act in accordance with the individual Tenant's lease, or the Authority's regulations, which adversely affect the individual's Tenant's rights, duties, welfare or status.
- B. Complainant – shall mean any Tenant whose grievance is presented to Authority in accordance with Section IV and V below.
- C. Elements of due process – shall mean, in an eviction action or a termination of tenancy in a State or local court the following required procedural safeguards:
 - 1. Adequate notice to the Tenant of the grounds for terminating the tenancy and for eviction;
 - 2. Right of the tenant to be represented by counsel; at the expense of the tenant;
 - 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 which the Tenant may have;
 - 4. A decision on the merits.
- D. Hearing Officer – shall mean a person selected in accordance with Section V of these procedures to hear grievances and render a decision with respect thereto.
- E. Hearing Panel – shall mean a panel selected in accordance with Section V of these procedures to hear grievances and render a decision with respect thereto.
- F. Tenant – shall mean 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 the lessee of the dwelling unit or, if no such person now resides in the unit, (2) who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.

- G. Residents Organization- may be a tenant council and may include a Resident Management Corporation.

IV. INFORMAL SETTLEMENT OF GRIEVANCE

Any grievance (except as provided in Section II) shall be personally presented, in writing, to the Authority's central management office or to the management office of the housing project in which the Complainant resides, within five (5) business days after the occurrence giving rise to the grievance, so that the grievance may be discussed informally and an attempt made to settle it without a hearing. The Authority, at the time of presentation or within five (5) business days after such presentation, shall informally discuss the grievance with the Complainant or his representative. Within a reasonable time, not in excess of five (5) business days after presentation of the grievance, a summary of the informal discussion shall be prepared by the Authority, and a copy shall be provided to the Complainant and a copy retained in the tenant file. The summary shall be in writing and shall 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 therefore, and shall specify the procedures by which the Complainant may obtain a hearing if the Complainant is not satisfied by the proposed disposition of the grievance.

V. PROCEDURE TO OBTAIN A HEARING

- A. Request for Hearing. If the Complainant is not satisfied with the results of the informal conference, the Complainant may submit a written request for a hearing to the project office not later than five (5) business days after receipt of the summary of discussion provided for in Section IV above. For a grievance under the Expedited Grievance Procedures pursuant to subsection V-G for which an informal conference is not applicable. Complainant shall submit such request within three (3) business days after the occurrence giving rise to the grievance. The written request shall specify the reason for the grievance, and the action or relief sought.
- B. Selection of Hearing Officer or Hearing Panel. Grievances shall be presented before a Hearing Officer or Hearing Panel. A Hearing Officer or Hearing Panel shall be promptly selected in the following manner:
1. The Hearing Officer shall be an impartial, disinterested person selected by the Authority other than the person who made or approved the Authority action under review or a subordinate of that person.

2. In lieu of the procedures set forth in paragraph 1 herein, the Authority may provide for the appointment of a Hearing Officer or Hearing Panel by any method which is approved by the majority of Tenants (in any building, group or buildings, or project, or group of projects to which the method is applicable) voting in an election or meeting of Tenants held for the purpose.
 3. The Authority from time to time may consult with resident organization (if there be any) as to suggested lists of hearing officers or panel members that the Authority may consider, but not be bound to, when making an appointment.
- C. Failure to request a Hearing: If the Complainant does not request a hearing in accordance with subsection V-A, the Authority's disposition of the grievance under Section IV shall become final, provided failure to request a hearing shall not constitute a waiver by the Complainant of his/her right thereafter to contest the action in disposing of the complaint in an appropriate judicial proceeding.
- D. Hearing Prerequisite. All grievances shall be personally presented, either orally or in writing, pursuant to the informal procedure prescribed in Section IV as a condition precedent to a hearing under this section; provided that if the Complainant shall show good cause why he or she failed to proceed in accordance with Section IV to the Hearing Officer or Hearing Panel, the provisions of this subsection may be waived by the Hearing Officer or Hearing Panel.
- E. Escrow Deposit. Before a hearing is scheduled in any grievance involving the amount of rent, as defined in the Dwelling Lease Agreement, which the Authority claims is due, the Complainant shall pay to the Authority an amount equal to the amount of the rent due and payable. The Complainant shall thereafter deposit the same amount in an escrow account monthly until the complaint is resolved by decision of the Hearing Officer or Hearing Panel. These requirements may be waived by the Authority in extenuating circumstances. Unless so waived, the failure to make such payment shall result in a termination of the grievance procedures; 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 the grievance in any appropriate judicial proceeding.

- F. Scheduling of Hearings. Upon Complainant's compliance with paragraphs A, D and E of this Section, a hearing shall be scheduled by the Hearing Officer or Hearing Panel promptly for a time and place reasonably convenient to both the Complainant and the Authority. Written notification, specifying the time, place and the procedures governing the Hearing shall be delivered to the Complainant and the appropriate Authority official.
- G. Expedited Grievance Procedures. Although these grievance procedures shall not be applicable to certain terminations of tenancy or evictions described in Subsection II-C, nevertheless in the sole discretion of the Authority upon timely request for a hearing pursuant to Subsection V-A, the Authority may grant a hearing subject to the following special procedures:
- i. The hearing shall be schedule by written notice to Complainant within five (5) business days of receipt of the Complainant's request. If the Authority fails to timely give notice of such hearing, these procedures shall no longer be applicable to such grievance.
 - ii. The Hearing Officer, who shall be an impartial, disinterested person, shall be selected by the Authority.
 - iii. The hearing shall comply with Section VI and Section VII.

VI. PROCEDURES GOVERNING THE HEARING

- A. The hearing shall be held before a Hearing Officer or Hearing Panel as appropriate.
- B. The Complainant shall be afforded a fair hearing 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 made available after request 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 the Tenant's representative and to have such person make statements on the Tenant's behalf;
 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 or her complaint, to controvert evidence relied on by the Authority and to confront and cross-examine all witnesses on whose testimony or information the Authority relies; and
 5. A decision based solely and exclusively upon the facts presented at the hearing.
- C. The Hearing Officer or Hearing Panel may render a decision without proceeding with the hearing if the Hearing Officer or Hearing Panel determines that the issue has been previously decided in another proceeding.
 - D. If the Complainant or the Authority fails to appear at a scheduled hearing, the Hearing Officer or Hearing Panel 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 party has waived the right to a hearing. Both the Complainant and the Authority shall be notified of the determination by the Hearing Officer or Hearing Panel; provided that a determination that the Complainant has waived the 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.
 - E. 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 justifying the Authority action or failure to act against which the complaint is directed.
 - F. The hearing shall be conducted informally, by the Hearing Officer or Hearing Panel, and oral or documentary evidence pertinent to the facts and issues resided by the complaint may be received without regard to admissibility and the rules of evidence applicable to judicial proceedings. The Hearing Officer or Hearing Panel 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 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 denial of the relief sought, as appropriate.
 - G. 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. Any interested party may purchase a copy of such transcript.

H. Accommodations of Persons with Disabilities.

- i. The Authority shall provide reasonable accommodations for persons with disabilities to participate in the hearing, including sign language interpreters, readers, accessible locations, or attendants.

VII. DECISION OF THE HEARING OFFICER OR HEARING PANEL

- A. The Hearing Officer or Hearing Panel shall prepare a written decision, together with the reasons therefore, within a reasonable time not to exceed seven (7) business days after the hearing. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the Authority and make available for inspection by a prospective Complainant, his or her representative, or the Hearing Officer or Hearing Panel.
- B. The decision of the Hearing Officer or Hearing Panel shall be binding on the Authority, which shall take all actions, or refrain from any actions, necessary to carry out the decision unless Dover Housing Authority Executive Director determines within five (5) business days and promptly notifies the Complainant of a determination that:
 1. The grievance does not concern Authority action or failure to act in accordance with or involving the Complainant's lease or Authority regulations, which adversely affect the Complainant's rights, duties, welfare or status;
 2. The decision of the Hearing Officer or Hearing Panel is contrary to applicable Federal, State or local HUD regulations or requirements of the Annual Contributions Contract between HUD and the Authority.
- C. A decision by the Hearing Officer, Hearing Panel, or the Authority's Executive Director 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.

VIII. AUTHORITY EVICTION ACTIONS

If a Tenant has timely requested a Hearing in accordance with Section V (and the Authority has agreed to a hearing with respect to any Expedited Grievance Procedures) on a complaint involving an Authority notice of termination of the tenancy and the Hearing Officer or Hearing Panel upholds the Authority's action to terminate the tenancy, the Authority 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 or the Hearing Panel having been 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 the applicable statutory period, or on the termination date stated in the notice of termination, whichever is later, appropriate action will be brought against him or her and he or she may be required to pay court costs and attorney fees.