

BROOKLINE HOUSING AUTHORITY (BHA)

90 Longwood Avenue
Brookline, MA 02446
Phone: (617) 277-2022



GRIEVANCE POLICY AND HEARING PROCEDURE FOR STATE-AIDED PUBLIC HOUSING PROPERTIES

ADOPTED: 06/13/2023



I. Purpose and Scope

This Grievance Policy and Procedure is established and implemented by the Brookline Housing Authority (hereinafter “BHA”) to assure that the BHA State Public Housing residents are afforded a prompt and reliable opportunity for a hearing if they dispute an adverse action taken by the BHA involving their lease or BHA regulations, which adversely affect the individual resident's rights, duties, welfare or status. The Grievance Procedure outlined herein is specifically incorporated in **Section X(F)** the BHA form-lease.

II. Applicability

- A. The BHA grievance procedure is applicable to all individual grievances as specified in **Section III** of this document between the State-Public Housing resident and the BHA. Residents shall have **no** right to a Grievance Hearing for:
1. Evictions which are brought pursuant to nonpayment of rent, pursuant to M.G.L. c. 186 § 11. (See M.G.L. c. 121B § 32 and **Section X(E)** of the BHA form-lease).
 2. Evictions which are brought pursuant to the expedited procedure set out in M.G.L. c. 139 § 19. (See M.G.L. c. 121B § 32 and **Sections X(B) and X(E)** of the BHA form-lease).
 3. Evictions which are brought pursuant to the procedure set out in M.G.L. c. 121B § 32.
 4. Matters which have already been heard by the Hearing Officer or for which there has been a judicial resolution;
 5. Matters involving class grievances or disputes between two (2) or more resident's, not involving the BHA;
 6. Matters which are initiated for the purpose of defining the meaning/purpose of a statute, regulation, or rule; or
 7. Grievances that are initiated for the purpose of negotiating policy changes between a group or groups of residents and the BHA Board of Commissioners.

III. Definitions

For the Purpose of this document, the following definitions are applicable:

- A. "Grievance" –
- a. An allegation by a tenant that an LHA or an LHA employee has acted or failed

- to act in accordance with the tenant's lease or any statute, regulation, or rule regarding the conditions of tenancy and that the alleged action or failure to act has adversely affected the status, rights, duties, or welfare of the tenant or a household member;
- b. An allegation by a program participant that an LHA or an LHA employee has acted or failed to act in accordance with any statute, regulation, or rule regarding the program and that the alleged action or failure to act has adversely affected the status, rights, duties, or welfare of the grievant or a household member; or
 - c. An appeal by a data subject pursuant to 760 CMR 8.00: Privacy and Confidentiality.
 - d. 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 LHA 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.
- B. “Grievant” – is any tenant or program participant who files a written Grievance with the BHA in accordance with **Section IV** of this Policy. A Grievant shall also include any person about whom the BHA holds data (data subject) who pursues an appeal in accordance with this Policy, pursuant to 760 CMR 8.00.
- C. “Hearing Officer” – an impartial person, as selected pursuant to **Section VI** of this Policy, who conducts a Grievance Hearing in accordance with the procedures in this Policy and renders a written decision based on the material facts and applicable law presented to them.
- D. “Good Cause” –
- a. For terminating a lease: in a Grievance Hearing regarding whether good cause exists for terminating a lease, “good cause” shall be found where the termination of tenancy is for one of the grounds specified in the EOHLC regulations and BHA policies. If the grounds for termination are not specified in the regulations or in compliance with BHA policies, then the decision of the BHA will be overturned.
 - b. For failure to appear for a hearing: for purposes of this Policy, specifically **Section VII** of this Policy, the term “good cause” shall mean an unavoidable scheduling conflict which seriously affects the health, safety or welfare of the family. If a Grievant requires that a Grievance Hearing be postponed or wishes to retro-actively excuse their absence from a Grievance Hearing, the Grievant must demonstrate, with verifying documentation to the satisfaction of the Hearing Officer, that they could not be present at the Grievance Hearing based on an unavoidable scheduling conflict which seriously affected the health, safety or welfare of the family. For example, Garden variety negligence, such as forgetting the date of the Grievance Hearing or calendaring the Grievance Hearing on the wrong date is not a serious and unavoidable scheduling conflict.

IV. Initiation of the Grievance

- A. Lease Termination – A Grievance regarding whether good cause exists for terminating a lease shall be initiated by the tenant in writing and shall be mailed (postmarked) or hand-delivered to the BHA at its main office at 90 Longwood Avenue Brookline, Massachusetts 02146, within seven (7) calendar days after notice of lease termination has been given to the tenant by the BHA.
- B. Participation Termination – A grievance regarding whether participation in the MRVP or AHVP should be terminated shall be initiated by the program participant in writing, and shall be mailed (postmarked) or delivered to the BHA at its main office at 90 Longwood Avenue Brookline, Massachusetts 02146, within seven (7) calendar days after notice of the participation termination has been given to the tenant by the BHA.
- C. Other Matters – A grievance regarding any other matter – other than whether good cause exists for terminating a lease or MRVP program participation – shall be initiated by a grievant in writing, and shall be mailed (postmarked) or delivered to the BHA at its main office within no more than fourteen (14) calendar days after the date on which the Grievant first became aware or should have become aware of the subject matter of the Grievance. The BHA may, at the Executive Director's discretion, permit a grievance to be initiated late for good cause shown.
- D. Additional Time – The BHA may permit additional time for initiation of a grievance, only if the BHA finds that there was good cause for the late initiation of the grievance, and that the late initiation would not cause prejudice to the BHA.
- E. Grievance Hearing Request – When initiating a Grievance, the Grievant shall submit a signed, written request to the BHA, at its main office at 90 Longwood Avenue Brookline, Massachusetts 02146, specifying:
 - 1. The reason for the grievance, and
 - 2. The action or relief sought.

V. Informal Settlement of Conference

- A. Promptly, following the initiation of a Grievance, unless otherwise provided, the BHA's Executive Director or their designee shall give the Grievant the opportunity to discuss the Grievance informally.
- B. The BHA shall give the Grievant, and/or their representative (if any), reasonable advance written notice of the time and place for the Informal Settlement Conference (a/k/a Pre-Grievance Settlement Conference). The Informal Settlement Conference shall be held telephonically unless otherwise described in the written notice.
- C. The purpose of the Informal Settlement Conference shall be to exhaust all reasonable efforts to settle the Grievance informally without the necessity of a Grievance Hearing

and Grievance Officer.

- D. At the Informal Settlement Conference, the BHA and the Grievant may be represented by a lawyer or by a non-lawyer of their choosing, at their own expense.
- E. If the Grievance is resolved to the satisfaction of the BHA and the Grievant at the Informal Settlement Conference, the BHA and Grievant shall acknowledge the terms of the resolution in writing, and no formal Grievance Hearing shall be held.
- F. If the Grievant fails to attend the Informal Settlement Conference, the BHA shall move forward with scheduling the Grievance Hearing. If the Grievant requests a second Informal Settlement Conference after failing to attend the initial Informal Settlement Conference, the Executive Director or their designee, shall have sole discretion as to whether (1) a second Informal Settlement Conference shall be held, or (2) a Grievance Hearing will be held.
- G. The Grievant's failure to attend an Informal Settlement Conference shall not affect the Grievant's right to a Grievance Hearing.

VI. Right to a Formal Hearing and Hearing Exclusions

- A. Hearing Officer – The BHA's impartial hearing officer, shall be a person other than the person who made or approved the action under review or a subordinate of such person. The Hearing Officer shall conduct hearings on Grievances filed by a state-aided public housing tenant or household member. The Hearing Officer shall be appointed in accordance with Appendix A, attached hereto. The affected Local Tenant Organization(s), if applicable, will be contacted for comment and the appointment of a Single Hearing Officer shall include tenant participation as detailed in Appendix A and 760 CMR 6.09, LTO and Resident Participation.
- B. In the event that there are no 'affected Local Tenant Organizations (LTO)' in existence at the time of appointing the impartial hearing officer, then the Executive Director shall appoint said Hearing Officer, so long as such appointment substantially complies with the other requirements of appointing a single hearing officer as outlined in Appendix A.

VII. Grievance Hearing Date and Notice of Hearing

- A. Scheduling – The BHA shall schedule a formal Grievance Hearing to determine whether Good Cause exists for terminating a lease within fourteen (14) days, or as soon as reasonably practical, after the date on which the BHA receives the Grievance. A Grievance Hearing regarding any other issue, shall be scheduled as soon as reasonably practical following receipt of the Grievance.
 - 1. As such, the BHA shall set a date for the Grievance Hearing no more than thirty (30) calendar days from the date of the request for a hearing (or as soon as practicable thereafter) and at least fifteen (15) calendar days prior to the date of

termination, or as soon as practicable.

2. The BHA shall give the Grievant and their representative (if any) reasonable advance written notice of the date, time, and place at least five (5) calendar days before the Grievance Hearing.
3. The Grievance Hearing shall be held remotely, via telephone or Zoom, at the Executive Director's discretion.

B. Treatment of Additional Reasons for Termination – At the Grievance Hearing, any additional reason(s) for termination of the lease, which arose subsequent to the date of the notice of termination, shall be considered:

1. So long as the BHA has given written notice to the Grievant as to the additional reason(s) not less than three (3) calendar days before the hearing, or
2. If the additional reason(s) for termination shall have arisen within such three (3) day period, a subsequent session of the hearing may be scheduled on not less than three (3) calendar days' notice to consider such reason(s).

C. Suspension of Eviction Proceedings Pending the Hearing

In cases of lease termination:

1. If the Grievant is entitled to request a Grievance Hearing and has made a timely request, the BHA shall not file a Summons and Complaint commencing a summary process action until the Grievance Hearing is held and a Hearing Decision in the BHA's favor is received.
2. If the Hearing Officer decides in the Grievant's favor, finding that the BHA did not have Good Cause to terminate the tenancy, then the BHA shall consider the Thirty-Day Notice to Quit void, the tenancy shall be automatically renewed, and the BHA shall not proceed with a Summary Process Action. Such a finding shall not, without more, nullify the BHA's ability to cite the alleged lease violations from the subject Notice to Quit in any subsequent Notice to Quit and/or Summary Process action.

D. Rescheduling of Hearing – The Hearing Officer may reschedule a Grievance Hearing by agreement of the parties or upon a showing by the Grievant that rescheduling is Reasonably Necessary. The BHA need only show that a conflict has arisen which would warrant the rescheduling of a Grievance Hearing.

E. Failure to Appear at the Hearing

1. If the Grievant fails to appear at a scheduled Grievance Hearing, the Hearing Officer shall determine that the party has waived their right to a hearing. The Hearing Officer may, at their sole discretion, make a determination to

reschedule the Grievance Hearing if within one (1) business day of the original Grievance Hearing date, the Grievant can show good cause for failing to appear.

2. Both the Grievant and the BHA shall be notified, in writing, of the determination by the Hearing Officer; provided however, that a determination that the Grievant has waived their right to a Grievance Hearing shall not constitute a waiver of any right the Grievant may have to contest the BHA's disposition of the Grievance in an appropriate judicial proceeding.

F. Document Review Prior to Hearing

1. Prior to a grievance hearing, the BHA shall give the grievant or their Representative a reasonable opportunity to examine BHA documents, including records and regulations, that are directly relevant to the grievance.
2. The written notice of the Grievance Hearing shall further notify the Grievant of their right to request, no sooner than seventy-two (72) hours, prior to the hearing, any BHA documents, including records and regulations, that are directly relevant to the Grievance.
3. Following a timely request made no sooner than seventy-two (72) hours prior to the hearing, the BHA shall provide copies of such documents to the grievant and, for good cause (including financial hardship), may waive the charge for the copies. Said documents shall be provided to the Grievant no later than one (1) calendar day preceding the Grievance Hearing.

G. Persons Entitled to be Present

1. The Grievance Hearing shall be private unless the Grievant requests in writing that it be open to the public.
2. If the Grievant requests an open hearing, the Grievance Hearing shall be open to the public, unless the Hearing Officer otherwise orders.
3. The BHA and the Grievant shall be entitled to specify a reasonable number of persons who may be present at a private Grievance Hearing.
4. A challenge to the presence of any such person shall be decided by the Hearing Officer.
5. At the hearing, the BHA and the Grievant may be represented by a lawyer or by a non-lawyer.
6. Each person present at the hearing shall conduct themselves in an orderly manner or they may be excluded or removed from the Grievance Hearing by the Hearing Officer.

7. If the Grievant misbehaves at the Grievance Hearing, the Hearing Officer may take other appropriate measures to deal with the misbehavior, including dismissing the Grievance entirely.

VII. Procedure at Grievance Hearing

- A. The Hearing Officer shall conduct the grievance hearing in a fair manner without undue delay:
 1. The Hearing Officer shall initially take appropriate steps to define the issues.
 2. Thereafter relevant information, including testimony of witnesses and written material, shall be received regarding such issues.
 3. Both the Grievant and the BHA shall be entitled to question each other's witnesses.
 4. There shall be a presumption of good cause for termination where the Grievant raises substantive defenses to the action (e.g., habitability issues, retaliation, etc.).
- B. Procedures at the Grievance Hearing shall be informal, and formal rules of evidence shall not apply.
- C. The Grievance Hearing shall be tape-recorded by the BHA and may be tape-recorded by the Grievant.
- D. The Hearing Officer may question the witnesses and parties who are present. The Hearing Officer may take notice of matters of common knowledge and applicable laws, regulations, and BHA rules and policies.
- E. The Hearing Officer may request the BHA or 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.
- F. The recording of the Grievance Hearing shall be maintained by the BHA until any applicable appeals have been decided or for a period of at least two (2) years. During that time, the Grievant or their representative may listen to the tapes at the BHA's offices.

VIII. Written Decision by the Hearing Officer and its Effect on the Parties

- A. Within fourteen (14) days following the Grievance Hearing, or as soon thereafter as reasonably possible, the Hearing Officer shall provide the BHA 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.

- B. A decision regarding whether Good Cause exists for terminating a lease shall specifically state whether the Hearing Officer found that the BHA did or did not have Good Cause to terminate the parties' lease. If the Hearing Officer finds that the BHA did not have Good Cause to terminate the lease, the Hearing Officer should not require or recommend alternative disciplinary actions. Rather, the Hearing Officer should render their decision and present it to the BHA. Upon receipt of said decision, the Executive Director or their designee, may implement less-severe lease enforcement measures, short of lease termination, at their discretion.
- C. The Hearing Officer may render a decision without proceeding with a Grievance Hearing if it is determined that the issue has been previously decided in another proceeding.
- D. The decision shall be based on the evidence at the Grievance Hearing and such additional information as may have been provided to the Hearing Officer at his or her request.
- E. Upon receipt of the Hearing Officer's decision, the BHA shall forthwith mail or otherwise deliver a copy of the decision to the Grievant and their representative (if any).
- F. A copy of the decision (with names and personally identifiable information deleted) shall thereafter be maintained at the BHA and shall be open to public inspection.

IX. Review by the BHA Board

- A. Either the Grievant or the BHA may appeal the Hearing Officer's decision to the BHA Board. However, in cases where the decision concerns whether good cause exists for termination of a lease, there shall be no review by the BHA board available.
- B. In decisions that (1) do not concern whether good cause exists for termination of a lease, and (2) either the Grievant or the BHA believes that:
 - 1. The decision of the Hearing Officer is not supported by the facts;
 - 2. The decision does not correctly apply the terms of the lease or applicable laws, regulations, rules and/or policies; then, that party may, within fourteen (14) days of mailing or other delivery of the decision, may request a review of the decision by the BHA's Board.
- C. At the next scheduled Board meeting following the receipt of the appeal, the Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the BHA and Grievant to make oral presentations and/or submit documentation.
- D. The Board may also permit the Hearing Officer to make a presentation.

- E. The decision of the Board shall be in writing and shall explain its reasoning.
- F. 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.

X. Review by the Executive Office of Housing and Livable Communities

- A. In the event that the BHA's Board makes a material change in the decision of the Hearing Officer, the Grievant may make a written request to EOHLC for a review of the decision.
- B. Such request must be made in writing by the Grievant within fourteen (14) days of mailing or other delivery of the decision of the Board.
- C. EOHLC shall review the decision of the Board and shall render a written Decision upholding, setting aside, or modifying the decision of the Board.
- D. EOHLC shall mail copies of its decision to the BHA and the grievant or to their attorneys.

XI. Effect of a Decision on a Grievant

- A. The decision on a Grievance shall be binding between the BHA 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.
- B. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court.
- C. As between the BHA and any person who was not a grievant, the decision on a Grievance shall have no binding effect.
- D. Except as otherwise provided herein, in the event the Hearing Officer's decision on a Grievance determines that good cause exists for terminating the lease, the BHA may, upon receipt of the decision, file a Summary Process Summons and Complaint, and there shall be no further review by the Board or EOHLC.

XII. Miscellaneous

- A. Rent Determination
 - a. During the pendency of any Grievance Hearing involving the Grieving of the amount of monthly rent, as defined in the payments due under the lease

which the BHA claims is due, the Grievant shall pay to the BHA an amount equal to the amount of the rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. The Grievant shall thereafter deposit the same amount of the monthly rent in an escrow account monthly until the Grievance is resolved by the decision of the Hearing Officer.

- b. These requirements may be waived by the BHA in extenuating circumstances. Unless so waived, the failure to make such payments shall result in a termination of the Grievance Procedure; provided, however that failure to make payment shall not constitute a waiver of any right the complainant may have to contest the BHA's disposition of his/her Grievance in any appropriate judicial proceeding.
- B. Transcript – Following the Grievance Hearing, either the Grievant or the BHA may arrange, at the expense of the party making the arrangement, for a transcript of the Grievance Hearing.

APPENDIX A
Grievance Procedure Provisions for a Single Hearing Officer

(1) Appointment of Hearing Officers and Jurisdiction. This grievance procedure adopted by the Brookline Housing Authority (BHA) requires a hearing and determination of a matter subject to the procedure by a single hearing officer. The hearing officer shall be appointed to serve for a term not to exceed seven (7) years and shall serve all residents of state-aided public housing in the city or town and participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the BHA, except for those persons who are subject to a different grievance procedure.

Under this procedure the BHA shall from time to time nominate one (1) or more persons to serve as hearing officer(s) to preside at and conduct hearings and to render prompt and reliable written determinations of matters at issue. The BHA shall submit its written nomination(s) for hearing officer(s) to each affected Local Tenant Organization (LTO). Each nomination shall include a resume of the nominee and the length of the term for which he or she is nominated. Within five (5) days of receipt of a nomination any affected LTO may make a written request to the BHA to interview the nominee. Following such a request for an interview by an affected LTO, the BHA shall make prompt arrangements for an interview between the nominee and the LTO(s) which made the request. Within thirty (30) days after the receipt of a nomination or within five (5) days after its interview of a nominee, whichever is later, any affected LTO may approve or disapprove the nominee by giving written notice to the BHA. A notice of disapproval shall include the specific reason(s) why the LTO disapproved the nominee. If all affected LTO(s) shall approve a nominee or if no affected LTO shall disapprove a nominee within the requisite time, the nominee shall thereupon become a hearing officer upon written acceptance mailed or delivered to the BHA which shall notify the LTO(s).

Each hearing officer shall annually certify to the BHA that he or she is ready, willing and able to serve; failure to so certify within ten (10) days of receipt of a written request by the BHA shall render the hearing officer's position vacant.

(2) Impartiality of the Hearing Officer. A hearing officer or a member of his or her family shall not have and shall not appear to have any direct personal or financial interest in the outcome of any matter before him or her. No hearing officer shall be related by blood or marriage to any party or to any person who gives evidence as to facts which are disputed by the parties. No hearing officer may determine matters which directly concern his or her own housing or the housing of a family member or his or her own status or the status of a family member in that housing. Each hearing officer shall determine any matter at issue impartially and objectively on the basis of the evidence and applicable law. Any hearing officer, who shall be or shall appear to be unable to determine any matter impartially and objectively shall remove himself or herself as hearing officer, whether or not he has been requested to do so.

(3) Removal of the Hearing Officer. A hearing officer may be permanently removed from office at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias or partiality. The BHA and any affected LTO(s) may agree on removal after notice to the hearing officer and the opportunity for him or her to be heard. In the absence of agreement, the Department may remove a hearing officer for cause upon a request by the LHA or the LTO. Prior to removing

a hearing officer, the Department shall require a detailed written specification of the reason(s) for removal and, if it finds the specification to set out good and sufficient cause, shall give the hearing officer, the BHA and the LTO(s) the opportunity to be heard. The Department's decision whether to remove a hearing officer shall be in writing mailed to the hearing officer, the BHA, and the LTO(s). If a written specification fails to detail good and sufficient cause for removal, the Department shall deny a request for removal without a hearing.

(4) Appointments of Interim Hearing Officers. If there shall not be a hearing officer able and willing to serve for one or more pending matters and if use of the appointment process in section (1) of this grievance procedure would likely cause significant delay with potential adverse consequences to either the BHA or the grievant, the BHA with notice to the affected LTO(s) may request that an interim hearing officer be named by the Department. Such a request shall be in writing and shall specify the reason for the request. The affected LTO(s) shall be given a reasonable opportunity to comment on the request. If the Department finds there to be a reasonable need for an interim hearing officer, the Department shall name an interim hearing officer. The Department may name a previously disapproved nominee to serve as interim hearing officer if it finds that the LTO's stated reasons for disapproval did not constitute good and sufficient cause for disapproving the nominee.

An interim hearing officer shall have all the powers and duties of a hearing officer and shall serve in the pending matters for which he or she was appointed. An interim hearing officer may be nominated by the BHA to be hearing officer in the manner set out herein.

(5) Scheduling. The BHA shall be responsible for scheduling and other administrative matters, including all necessary notices.

(6) Procedural Provisions. The provisions of 760 CMR 6.08(4) are incorporated by reference into this grievance procedure. These provisions include:

- (a) the provisions regarding the time and method for initiating a grievance;
- (b) the requirement of a pre-hearing informal settlement conference between grievant and the LHA about the grievance;
- (c) the provisions regarding the LHA's setting a hearing date and giving notice to grievant;
- (d) the grievant's right to inspect relevant documents and to secure copies before the grievance hearing;
- (e) the provisions regarding who may be present at the grievance hearing;
- (f) the procedural requirements for the conduct of grievance hearings; and
- (g) the requirements regarding a written decision following the grievance hearing.