

MIDDLEBOROUGH HOUSING AUTHORITY

GRIEVANCE PROCEDURE

1. General Overview

- A. Presently, State regulation 760 C.M.R. 6.08 requires each Local Housing Authority (LHA) to have a grievance procedure of which the purpose shall be the prompt and reliable determination of grievances. Furthermore, the adopted procedures must be available to all public housing tenants, program participants in the rental assistance programs and to an individual who has filed an appeal pursuant to 760 C.M.R. 8.00 (Privacy and Confidentiality).
- B. A grievance is defined as an allegation that an LHA or an LHA employee has acted or failed to act in accordance with any statute, regulation, or rule regarding the conditions of tenancy or the program and that the alleged action or failure to act has adversely affected the status, rights, duties or welfare of the grievant and/or a household member.

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.

2. Initiation of a Grievance

- A. A grievance regarding whether good cause exists for terminating a lease shall be initiated by a tenant in writing and shall be mailed or delivered to the LHA at its main office within seven (7) days after a notice of lease termination has been given to the tenant by the LHA.
- B. A grievance regarding whether participation in the MRVP, AHVP or any other rental assistance program shall be initiated by a program participant in writing and shall be mailed or delivered to the LHA at its main office within seven (7) days after a notice of program termination has been given to the program participant by the LHA.
- C. A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed or delivered to the LHA at its main office no more than fourteen (14) days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance, provided the LHA shall have discretion to permit a grievance to be initiated late.

In the event that a tenant files a grievance as to the amount of a re-determined rent within fourteen (14) days of the LHA's notice of the re-determined rent, the tenant shall continue to pay the rent then in effect (unless the re-determined rent is (lower) until disposition of the grievance. Moreover, the tenant must be current in all undisputed rent in order to grieve. 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 re-determined rent or the LHA shall credit the tenant with any amount paid but determined not to have been due. In the absence of a grievance, the re-determined rent shall be paid beginning on its effective date.

- D. The LHA shall permit additional time for initiation of a grievance if the LHA shall find that there was a good reason for late initiation of the grievance and that there was a good reason for late initiation of the grievance and that the late initiation would not cause prejudice to the LHA.

3. Informal Settlement Conference

Promptly after the initiation of a grievance, unless otherwise provided, the LHA'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 LHA 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 LHA. 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 LHA 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 concurrence.

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

- B. No grievance hearing shall be requested or held under any of the circumstances specified in Items (1) – (8) in 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 LHA has reason to believe that tenant or household member
 - a) has unlawfully caused serious physical harm to another tenant or an employee of the LHA or any other person lawfully on the LHA's property.
 - b) has unlawfully threatened to cause serious physical harm to any member of a tenant household or an LHA employee or any person lawfully on the LHA's property.
 - c) has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or of the LHA or any person lawfully on the LHA'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 LHA's property in violation of M.G.L. c269, section 10.
 - e) has unlawfully possessed or used an explosive or incendiary device on or adjacent to LHA's property or has otherwise violated M.G.L. c 266, Sections 101, 102,102A or 102B.
 - f) has unlawfully possessed, sold, or possessed with intent to distribute a class A,B, or C controlled substance, as defined in M.G.L. 94C, Section 31, on or adjacent to the LHA'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, an LHA employee, or any person lawfully on the LHA's property; or
- (3) In the event the LHA 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 beforehand 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 LHA receives the grievance. The LHA shall schedule such a hearing on a date within thirty (30) days from the date of a request for a grievance hearing and 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 tenant. At the grievance hearing any additional reason for termination of the lease, which arose subsequent to the date of the notice of termination, shall be considered so long as the LHA has given written notice to the tenant as to the additional reason not less than three (3) days before the hearing, or, if a reason for eviction shall have arisen within such three (3) day period, a subsequent session of the hearing may be scheduled on not less than three (3) days notice to consider such reason. In cases where tenant is entitled to a grievance hearing and has made a timely request, the LHA shall not file a summary process summons and complaint pending the hearing and a decision or other resolution in the LHA's favor.
- B. A hearing of a grievance regarding some other issue, shall be scheduled as soon as reasonably convenient following receipt of the grievance. The LHA 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. LHA or the hearing officer may reschedule a hearing by agreement or upon a showing of third party documentation by the grievant or by the LHA that rescheduling is reasonably necessary.

6. Pre-Hearing Examination of Relevant Documents

Prior to a grievance hearing the LHA shall give the grievant or his or her representative a reasonable opportunity to examine LHA documents which are directly relevant to the grievance. Following a timely request, the LHA 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

The grievance hearing shall be private unless the grievant requests 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 otherwise orders. The LHA and the grievant shall be entitled to specify a reasonable number of persons who may be present at a private hearing. A challenge to the presence of any such person shall be decided by the hearing officer. At the hearing the LHA and the grievant may be represented by a lawyer or by a non-lawyer. Each person present at the hearing shall conduct himself or herself in an orderly manner or he or she shall be excluded. 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. **Procedure at Grievance Hearings**

The hearing officer shall conduct the grievance hearing in a fair manner without undue delay. The hearing officer shall initially take appropriate steps to define the issues. Thereafter, relevant information, including testimony of witnesses and written material, shall be received regarding such issues. Both the grievant and the LHA 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 LHA rules and policies. The hearing officer may request the LHA 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**

Within fourteen (14) days following or as soon thereafter as reasonably possible the hearing officer shall provide the LHA 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. The LHA 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 thereafter be maintained at the LHA and shall be open to public inspection.

10. **Review by the LHA's Board**

In cases where the decision concerns whether good cause exists for terminating a lease, there shall be no review by the LHA's Board. In other cases, in the event that the grievant or the LHA 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 delivery of the decision, the grievant or the LHA may request review by the LHA's Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the LHA and grievant to make oral 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**

In the event that the LHA's Board shall make a material change in a 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**

The decision on a grievance shall be binding between the LHA 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 of a grievance, the court's determination on the matter shall supersede the decision on the grievance. In the event a decision on the grievance determines that good cause exists terminating a lease, the LHA may thereupon file the 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 LHA any person who was not a grievant, the decision on a grievance shall have no binding effect.

Adopted: September 1999
Reviewed: March 28, 2018

GRIEVANCE PROCEDURES

HEARING PANEL COMPOSITION

1. The present state hearing panel consists of one impartial person who was jointly appointed by the MHA and members of the Tenants Associations.
2. The present federal hearing panel consists of one impartial person who was appointed by the MHA.
3. The Hearing Officers shall serve for a seven (7) year term during which they may be re-appointed annually at the LHA's Annual Meeting held in April.

The re-appointments listed below were approved at the February 21, 2018 Board of Commissioners meeting.

<u>HEARING OFFICER</u>	<u>PROGRAM</u>	<u>TERM</u>	<u>EXPIRATION</u>
Kimberly Levangie	federal	7 years	2025
Kimberly Levangie	state	7 years	2025
Josephine Ruthwicz	informal hearings	7 years	2025