

LORAIN METROPOLITAN HOUSING AUTHORITY

GRIEVANCE PROCEDURE

I. PURPOSE

This grievance procedure has been adopted to provide a forum and procedure for Tenants to seek the just, effective settlement of grievances against the Lorain Metropolitan Housing Authority (LMHA).

II. GOVERNING LAW

The law governing this grievance procedure is section 6(k) of the U.S. Housing Act of 1937 (42 U.S.C. sec. 1437d(k) and subpart B of 24 CFR part 966 (24 CFR secs. 966.50 - 966.57).

III. APPLICABILITY

In accordance with applicable federal regulations, this grievance procedure shall be applicable to all grievances (as defined in Section IV below) between Tenant and LMHA with the following two exceptions:

- A.** This grievance procedure is not applicable to disputes between Tenants not involving LMHA, or to class grievances involving groups of Tenants. Also, this grievance procedure is not intended as a forum for initiating or negotiating policy changes between Tenants, or groups of Tenants, and LMHA's Board of Commissioners.
- B.** HUD has issued a due process determination that the law of the State of Ohio requires that Tenants be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in Section IV below) before eviction from a Unit. LMHA has determined that this grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:
 - (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of LMHA, or
 - (2) Any violent or drug-related criminal activity on or off the premises; or
 - (3) Any criminal activity that results in the felony conviction of a household member.

IV. DEFINITIONS

The following definitions of terms shall be applicable to this grievance procedure:

- A. **Grievance:** Any dispute which a Tenant may have with respect to an action or a failure to act by LMHA in accordance with the individual Tenant's Lease or LMHA regulations, which adversely affects the individual Tenant's rights, duties, welfare or status. .
- B. **CFR:** The code of federal regulations, which contains the federal regulations governing this grievance procedure.
- C. **Complainant:** Any Tenant (as defined in this section below) whose grievance is presented to the central office of LMHA or to the Development office, in accordance with the requirements set forth in this procedure.
- D. **Drug-related criminal activity:** The illegal manufacture, sale, distribution, or use of a drug or the possession of a drug with intent to manufacture, sell, distribute, or use the drug as defined in sec. 102 of the Controlled Substances Act (21 U.S.C. sec. 802) as from time to time amended.
- E. **LMHA or Authority:** The LMHA, a political subdivision organized and existing under the laws of the State of Ohio.
- F. **Elements of due process:** The following procedural safeguards which are required to be followed in an eviction action or a termination of tenancy in a state or local court:
 - (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;
 - (3) Opportunity for the Tenant. to refute the evidence presented by LMHA, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have; and
 - (4) A decision on the merits.
- G. **Hearing Officer:** An impartial person selected in accordance with 24 CFR Section 966.55 and this grievance procedure to hear grievances and render decisions with respect thereto.
- H. **HUD:** The United States Department of Housing and Urban Development.

- I. Notice:** As used herein, the term notice shall, unless otherwise specifically provided, mean written notice.
- J. The Regulations** - The HUD regulations contained in subpart B of 24 CFR part 966.
- K. Resident organization:** An organization of residents, which includes any resident management corporation.
- L. Tenant:** The adult person (or persons) other than a live-in aide:
- (1) Who resides in the Unit and who executed the Lease with LMHA as lessee of the Unit, or, if no such persons resides in the Unit,
 - (2) The person who resides in the Unit, and who is the remaining head of the household of the Tenant family residing in the Unit.
- M. Business Days:** Monday through Friday of each week, except for legal holidays recognized by the federal government.

V. INCORPORATION IN LEASES

This grievance procedure shall be incorporated by reference in all Leases between Tenants and LMHA.

VI. INFORMAL SETTLEMENT OF GRIEVANCES

- A. Initial Presentation.** Any grievance must be personally presented, either orally or in writing, to LMHA's main office, or to the Development's management office within ten (10) business days after the occurrence of the event giving rise to the grievance.
- B. Informal Settlement Conference.** If the grievance is not determined by LMHA to fall within one of the three exclusions mentioned in section III B (1) and III B (2) above, then the LMHA Manager will, within ten (10) business days after the initial presentation of the grievance, informally discuss the grievance with the Complainant or his representatives in an attempt to settle the grievance without the necessity of a formal hearing. If the informal settlement conference cannot occur at the time the grievance is initially presented by the Complainant, then the Complainant will be notified in writing of the time and place for the informal settlement conference.

- C. **Written Summary.** Within ten (10) business days after the informal settlement conference, a summary of the informal discussion shall be prepared by LMHA and a copy thereof shall be provided to the Complainant. 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 for such disposition. Written summary will also specify the procedures by which the Complainant may obtain a formal hearing if not satisfied by the proposed disposition of the grievance. A copy of the written summary shall also be placed in Complainant's Tenant file.

VII. FORMAL GRIEVANCE HEARING

The following procedures apply to the request for a formal grievance hearing under this grievance procedure:

- A. **Request for hearing:** If the Complainant is not satisfied with the results of the informal settlement conference, the Complainant must submit a written request for a formal hearing to LMHA's main office or the Development's management office no later than ten (10) business days after the date Complainant receives the summary of discussion delivered as required under Section VI above. In order for a formal hearing to be requested under this section, the Complainant must have complied with the provisions set forth in Section VI above, unless the Complainant shows good cause why he/she failed to comply with Section VI to the hearing officer.

Complainant's written request for a formal hearing must specify:

- (1) The reasons for the grievance; and
- (2) The action or relief sought by the Complainant.

- B. **Failure to Request Hearing.** If the Complainant fails to request a hearing within ten (10) business days after receiving the written summary of the informal settlement conference, LMHA's decision rendered at the informal hearing becomes final. The Complainant's failure to request a hearing does not constitute a waiver by the Complainant to contest LMHA's action judicially.

VIII. SELECTION OF HEARING OFFICER

All grievance hearings shall be conducted by an impartial person appointed by LMHA. The requirement to consult with resident organizations before appointing a hearing officer has been eliminated by the HUD Final Streamlining Rule effective April 7, 2016.

IX. SCHEDULING OF HEARINGS

- A. **Hearing prerequisites:** A Complainant does not have a right to a grievance hearing unless the Complainant has satisfied the following prerequisites to such a hearing:
- (1) The Complainant has requested a hearing in writing.
 - (2) The Complainant has completed the informal settlement conference procedure or has requested a waiver for good cause.

- (3) If the matter involves the amount of rent which LMHA claims is due under the Complainant's Lease, the Complainant shall have paid to LMHA an amount equal to the amount 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. And, in the case of situations in which hearings are, for any reason delayed, the Complainant shall thereafter, deposit the same amount of the monthly rent in an escrow account monthly until the complaint is resolved by decision of the hearing officer. Unless waived by LMHA in writing, no waiver of the hearing prerequisites will be given by LMHA except in cases of extreme and undue hardship to the Complainant, determined in the sole and absolute discretion of LMHA. Failure to comply with this provision will result in the termination of the grievance procedure. Such failure does not waive the Complainant's right to contest LMHA's disposition of the grievance judicially.

B. Time, Place, Notice.

- (1) Upon Complainant's compliance with the prerequisites to a hearing set forth above, a hearing shall be scheduled by the hearing officer for a time and place reasonably convenient to both the Complainant and LMHA, not later than the tenth (10th) business day after Complainant has completed such compliance.
- (2) A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the Complainant and the appropriate LMHA official, who, unless otherwise designated, shall be the Executive Director.

X. PROCEDURES GOVERNING HEARINGS

A. Fair Hearings.

The hearings shall be held before a hearing officer as described above in Section VIII. The Complainant shall be afforded a fair hearing, which shall include:

- (1) The opportunity to examine before the hearing any LMHA documents, including records and regulations that are directly relevant to the hearing.

The Complainant will be allowed to copy any such document at the Complainant's expense. If LMHA does not make the document available for examination upon request by the Complainant, LMHA may not rely on such document at the grievance hearing.

- (2) The right to be represented by counsel or other person chosen as the Complainant's representative and to have such person make statements on the Complainant's behalf.
- (3) The right to a private hearing unless the Complainant requests a public hearing. The right to present evidence and arguments in support of the Complainant's complaint, to controvert evidence relied on by LMHA and to confront and cross examine all witnesses upon whose testimony or information the LMHA or its management relies; and
- (4) A decision solely and exclusively upon the facts presented at the hearing.

B. Prior Decision in Same Matter.

The hearing officer may render a decision without proceeding with the hearing if he/she determines that the issue has been previously decided in another proceeding.

C. Failure to Appear.

If the Complainant or LMHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for a period not to exceed ten (10) business days or may make a determination that the party failing to attend has waived the right to a hearing. In such event, the hearing officer shall notify the Complainant and LMHA of the determination.

D. Required Showing of Entitlement to Relief.

At the hearing, the Complainant must first make a showing of an entitlement to the relief sought and thereafter LMHA must sustain the burden of justifying LMHA's action or failure to act with respect to the matter against which the complaint is directed.

E. Informality of Hearing.

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 the admissibility under the rules of evidence applicable to judicial proceeding.

F. Orderly Conduct Required.

The hearing officer shall require LMHA, 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. Transcript of Hearing.

The Complainant or the LMHA 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. Accommodation to Persons with Disabilities

LMHA 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.

XI. DECISION OF THE HEARING OFFICER

At or subsequent to the completion of the grievance hearing, the hearing officer shall make a determination as to the merits of the grievance and the following provisions shall govern:

A. Written Decision.

The hearing officer shall prepare a written decision, together with the reasons for the decision within ten (10) business days after the completion of the hearing.

- (1) A copy of the decision shall be sent to the Complainant and LMHA. LMHA shall retain a copy of the decision in the Complainant's Tenant folder.
- (2) A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by LMHA and made available for inspection by any prospective Complainant, his representative, or hearing officer.

B. Binding Effect.

The written decision of the hearing officer shall be binding upon LMHA, which shall take all actions, or refrain from any actions, necessary to carry out the decision unless LMHA's Board of Commissioners determines, within ten (10) business days, and properly notifies the Complainant of its determination, that:

- (1) the grievance does not concern LMHA, action or failure to act in accordance with or involving the Complainant's Lease, or LMHA's regulations, which adversely affect the Complainant's rights, rules, duties, welfare or status, or
- (2) the decision of the hearing officer is contrary to applicable Federal, State, or local law, HUD regulations or requirements of the annual contributions contract between HUD and the LMHA.

C. Continuing Right of Complainant to Judicial Proceedings.

A decision by the hearing officer or Board of Commissioners in favor of LMHA or which denies the relief requested by the Complainant, in whole or in part, shall not constitute a waiver of, nor effect in any way the rights of the Complainant to a trial or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

XII. NOTICES

All notices under this grievance procedure shall be deemed delivered: (1) upon personal service thereof upon the Complainant or an adult member of the Complainant's household, (2) upon the date received for or refused by the addressee, in the case certified or registered U.S. Mail, or (3) on the second day after the deposit thereof for mailing, postage prepaid, with the U.S. Postal Service, if mailed by first class mail other than certified or registered mail.

If a Tenant is visually impaired, any notice hereunder delivered to such Tenant shall be in an accessible format.

XIII. MODIFICATION

This grievance procedure may not be amended or modified except by approval of a majority of the Board of Commissioners of LMHA present at a regular meeting or a special meeting called for such purpose. Further, in addition to the foregoing, any change proposed to be made to this grievance procedure must provide for at least thirty (30) days advance notice to Tenants and resident organizations, setting forth the proposed changes and providing an opportunity to present written comments. The comments submitted shall be considered by LMHA before final adoption of any amendments hereto.

XIV. MISCELLANEOUS

- A. Captions:** Captions or paragraph headings set forth in this grievance procedure are for convenience of reference only and shall not be construed or interpreted to affect the substance of the paragraphs or sections so captioned.
- B. Concurrent Notice:** If a Tenant has filed a request for grievance hearing hereunder in a case involving LMHA's notice of termination of tenancy, the Complainant should be aware that the State law notice to vacate and the notice of termination of tenancy required under Federal law run concurrently. Therefore, if the hearing officer upholds LMHA's action to terminate the tenancy, LMHA may commence an eviction action in court upon the sooner of, the expiration of the date for termination of tenancy and the vacating of premises stated in the notice of termination delivered to Complainant, or the delivery of the report of decision of the hearing officer to Complainant, whichever is sooner.
- C.** This grievance procedure has been adopted in accordance with Section 966.52(C) of CFR part 966.
- D.** A copy of this grievance procedure has been furnished to each Tenant and to resident organizations.

EXHIBIT 1

HEARING OFFICER

1. LMHA Hearing Officer