

# **RAD Grievance Procedure**

## **I. Definitions:**

- A. **Grievance:** Any dispute a Tenant may have with respect to BHA action or failure to act in accordance with the individual Tenant's lease; or BHA regulations that adversely affects the individual Tenant's rights, duties, welfare or status.
- B. **Complainant:** Any Tenant whose grievance is presented to BHA in accordance with the requirements set forth in this procedure.
- C. **Hearing Officer:** A person selected in accordance with this procedure to hear grievances and render a decision with respect to them.
- D. **Settlement Meeting:** A meeting between the Complainant and the Tenant's Housing Manager and/or to the Manager, Housing Assistance and Housing Management subsequent to the presentation of a Grievance by the Tenant, for the purpose of discussing the grievance and settling it without a grievance hearing.
- E. **Tenant:** The adult person (or persons other than a live-in aide) who resides in the unit, and who:  
Executed the lease with BHA as lessee of the dwelling unit; or, if no such person now resides in the unit, is the remaining head of the household of the Tenant family residing in the dwelling unit.
- F. **Resident Organization:** An organization of residents.

## **II. Applicability:**

- A. This grievance procedure applies to all individual grievances (as defined in Section I above) between the Tenant and BHA with the following **three** exceptions:
  - 1. Any termination of tenancy or eviction that involves:
    - a. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of BHA, or
    - b. Any violent or drug-related criminal activity on or off such premises; or
    - c. Any criminal activity that resulted in felony conviction of a household member.
  - 2. Disputes between Tenants not involving BHA; or
  - 3. Class grievances.
- B. This grievance procedure is:
  - 1. not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and BHA's Housing Commission or Governing Board.
  - 2. incorporated by reference in all Tenant dwelling leases; and
  - 3. furnished to each Tenant and all Resident Organizations.
- C. Any changes proposed in this grievance procedure will provide for at least 30 days notice to Tenants and Resident Organizations, if any, setting forth the proposed changes and providing an opportunity to present written comments. Comments submitted will be considered by BHA before any revisions are made.

## **III. Settlement Meeting**

- A. Any grievance must be personally presented, either orally or in writing, to the Tenant's Housing Manager and/or to the Manager, Housing Assistance and Housing Management **within the following period of time:**
  - 1. If the Tenant has been served a Notice of Termination, within the number of days specified in the Notice;
  - 2. In all other instances, within 10 business days after the grievable event.
- B. If one of the exclusions in Sections II.A or II.B above applies, the complainant will be notified in writing **within 10 business days** that the matter raised is not subject to BHA's grievance procedure, with the reason it is not.
- C. If neither of the exclusions in Sections II.A or II.B above applies, BHA will contact the complainant **within 10 business days** to arrange a mutually convenient time to convene a Settlement Meeting to discuss the grievance and settle it without a grievance hearing.
- D. **Within 10 business days** following the Settlement Meeting, BHA will prepare and either, hand deliver, or mail to the Tenant, a summary of the meeting specifying:
  - 1. the names of the participants;
  - 2. the dates of meeting;
  - 3. the nature of the proposed disposition of the complaint and the specific reasons for doing so; and
  - 4. the procedures by which a grievance hearing under this procedure may be obtained if the complainant is not satisfied.
- E. A copy of this summary will also be placed in Tenant's file and a copy sent by first class mail or email, will be proof of time of delivery for the summary of the Settlement Meeting.

#### **IV. Grievance Hearing**

- A. If the complainant is dissatisfied with the settlement arrived at in the Settlement Meeting, or if no settlement was arrived at in the Settlement Meeting, the complainant may submit a written request for a grievance hearing **no later than 10 business days after the summary of the Settlement Meeting is mailed.**
- B. The written request must specify:
  - 1. The reasons for the grievance;
  - 2. The action or relief sought from BHA; and
- C. If the complainant requests a hearing in a timely manner, BHA will schedule one at the earliest time possible for the complainant, BHA and the Hearing Officer, **but in no case later than 10 business days** after BHA received the complainant's request.
- D. If the complainant fails to request a hearing within **10 business days** after receiving the summary of the Settlement Meeting, BHA's decision rendered at the Settlement Meeting becomes final and BHA is not obligated to offer the complainant a grievance hearing.
- E. Failure to request a grievance hearing does not affect the complainant's right to contest BHA's decision in a court hearing.

## **V. Hearing Officer**

BHA will designate a Hearing Officer from within BHA or from outside the agency. The Hearing Officer will be other than the person who made or approved the action or failure to act being appealed or a subordinate of that person.

## **VI. Escrow Deposit**

- A. Before a hearing is scheduled in any grievance involving the amount of rent which BHA claims is due under this lease, the complainant will:
  - 1. pay to BHA an amount equal to the rent which the Tenant has been advised by BHA is due and payable as of the first of the month preceding the month in which the act or failure to act took place; and
  - 2. thereafter, deposit the same amount of monthly rent in an escrow account monthly until the complaint is resolved by decision of the Hearing Officer.
- B. The requirement in Section VI.A, above, may be waived by BHA, at its sole discretion, for good cause.

## **VII. Grievance Hearing**

- A. When a complainant submits a timely request for a grievance hearing, BHA will:
  - 1. schedule the hearing within the following **10 business days**; and
  - 2. a written notice sent by first class mail or email, notify the complainant of the time, place and procedures governing the hearing.
- B. The complainant will be afforded a fair hearing, which will include:
  - 1. The opportunity to examine before the hearing any BHA documents, including records and regulations, that are directly relevant to the hearing.
    - a. The Tenant will be allowed to copy any such document at the Tenant's expense;
    - b. If BHA does not make the document available for examination upon request by the complainant, BHA may not rely on it at the grievance hearing.
  - 2. The right to:
    - a. be represented by counsel or other person chosen as the Tenant's representative, and to have that person make statements on the Tenant's behalf;
    - b. a private hearing unless the complainant requests a public hearing;
    - c. present evidence and arguments in support of the Tenant's complaint;
    - d. controvert evidence relied on by BHA; and
    - e. confront and cross examine all witnesses upon whose testimony or information BHA or project management relies; and
  - 3. 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. At the hearing, the complainant must first make a showing of an entitlement to the relief sought. Thereafter, BHA must sustain the burden of justifying BHA action or failure to act against which the complaint is directed.

- E. The hearing will be conducted informally by the Hearing Officer. Oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings.
- F. The Hearing Officer will require BHA, 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. Either the complainant or BHA may arrange in advance and, at the expense of the party making the arrangement, for a transcript of the hearing. Either party may purchase a copy of such transcript. Unless it elects another form of memorializing the hearing, BHA will arrange to have the hearing recorded and the complainant may purchase a copy of the recording.
- H. If needed by the complainant to participate in the hearing, BHA will provide:
  - 1. a specific accommodation (such as a qualified sign language interpreter, reader, accessible location, or attendant) if the complainant is a person with disabilities; or
  - 2. an interpreter if the complainant has a limited ability to read, write, speak or understand English.

#### **VIII. Failure to Appear**

- A. If the complainant or BHA fails to appear at the scheduled hearing the hearing officer may make a determination to:
  - 1. to postpone the hearing **for not to exceed 10 business days**; or
  - 2. that the party has waived its right to a hearing;
- B. Once the hearing officer has made the determination the hearing officer will notify both the complainant and BHA of his or her determination.
- C. A determination that the complainant has waived his or her right to a hearing will not constitute a waiver of any right the complainant may have to contest BHA's disposition of the grievance in court.

#### **IX. Hearing Officer's Decision**

- A. **Within 10 business days** after the hearing, the Hearing Officer will prepare a written decision, together with his or her reasons for so deciding, and send a copy of it to the complainant and BHA.
- B. BHA will retain:
  - 1. a copy of the decision in the Tenant's folder; and
  - 2. a copy of the decision with all names and identifying references deleted on file to be made available for inspection by a prospective complainant, his or her representative, or the hearing officer.
- C. The decision of the Hearing Officer will be binding on BHA, which will take all actions, or refrain from any actions, necessary to carry out the decision unless BHA's Housing Commission determines, **at its next regularly scheduled meeting for which required notice can be given**, and promptly notifies the complainant of its determination 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.
  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 BHA.
- D. A decision by the Hearing Officer or Housing Commission in favor of BHA, or which denies the relief requested by the complainant in whole or in part, does not constitute a waiver of, nor affect in any way, the rights of the complainant to a trial or judicial review in any court proceedings which may, later, be brought in the matter.