

# Brainerd Housing and Redevelopment Authority Grievance Procedure

## I. PURPOSE

The purpose of this grievance procedure is to assure that a Resident of a property leased from the Brainerd Housing and Redevelopment Authority (BHRA) is given an opportunity for a hearing if the Resident disputes within a reasonable time any BHRA action or failure to act involving the Resident's lease with BHRA or HUD regulations which adversely affect the individual Resident's rights, duties, welfare, or status.

## II. DEFINITIONS

**A. Complainant:** Any Resident whose grievance is presented to BHRA according to these procedures.

**B. Hearing Officer:** A Hearing Officer selected in accordance with Section VI. of this procedure, to hear grievances and render a decision.

**C. Grievance:** Any dispute which a Resident may have with respect to BHRA action or failure to act in accordance with the individual Resident's lease with BHRA or HUD regulations which adversely affects the individual Resident's rights, duties, welfare, or status.

**D. Resident:** The adult person (or persons) other than a live-in aide:

1. who resides in the unit and who executed the Lease as lessee with BHRA; or
2. who resides in the unit, and who is the remaining head of household of the Resident family residing in the dwelling unit.

**E. Resident Organization:** A group such as a Resident Council.

## III. APPLICABILITY

This grievance procedure applies to all individual grievances between BHRA and its residents except that BHRA excludes:

**A.** Disputes between tenants not involving BHRA;

**B.** Class action grievances;

**C.** Forums for initiating or negotiating policy changes between a group or groups of Residents and BHRA's Board of Commissioners; and

**D.** So long as a Due Process Determination by HUD is in effect for Minnesota (see Section V (E)), any grievance concerning a 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 BHRA; or
2. Any drug-related criminal activity on or near such premises.

#### **IV. INFORMAL SETTLEMENT OF GRIEVANCE**

**A. Informal Settlement Conference:** Any grievance shall be personally presented, either orally or in writing, to the BHRA office within five (5) days: (1) of an inaction by BHRA or (2) of the date of a notice of BHRA action. When the Grievance Procedure applies, BHRA will schedule an informal settlement conference to attempt to settle the dispute without a hearing.

If an informal settlement conference is held, a written summary of the conference discussion shall be prepared within a reasonable time; one copy shall be given to the Resident and one copy will be retained in the Resident's file. The summary shall specify the names of the participants, date of the meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore; it shall also specify the procedures by which a hearing may be obtained if the Complainant is not satisfied. The failure to request an informal settlement conference does not waive the Complainant's right to contest BHRA's action in disposing of the complaint in an appropriate judicial proceeding.

**B. Reasonable Accommodation:** BHRA must provide reasonable accommodation for persons with disabilities to participate in the informal settlement conference. Reasonable accommodation may include qualified sign language interpreters, readers, or accessible meeting locations.

If the Complainant is visually impaired, any notice to the Complainant which is required under this grievance procedure must be in an accessible format.

#### **V. PROCEDURE TO OBTAIN A HEARING**

**A. Request for a Hearing:** The Complainant shall submit a written request to BHRA's office within five (5) days after receipt of the summary of the informal conference discussion. The request shall state:

1. the reason(s) for the grievance; and
2. the action or relief requested.

**B. Hearing Prerequisite:** All grievances shall be personally presented either orally or in writing for the informal settlement conference as described in Section IV. as a condition for the scheduling of a formal hearing. If the Complainant shall show good cause to the Hearing Officer why s/he failed to proceed with the informal conference, this requirement may be waived by the Hearing Officer.

**C. Escrow Deposits:** Before a hearing is scheduled in any grievance involving rent which BHRA claims is due, the Complainant shall pay to BHRA an amount equal to the amount of 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 Complainant shall thereafter deposit the same amount of the monthly rent in an escrow account monthly until the complaint is resolved by the Hearing Officer. Unless waived, the failure to make such payments shall result in a termination of the grievance procedure. Failure to make such payments shall not constitute a waiver of any right the Complainant may have to contest BHRA's disposition of his/her grievance in any appropriate judicial procedure.

**D. Scheduling of Hearings:** Upon the Complainant's compliance with paragraphs A., B., and C. of this section, a hearing shall be scheduled by the Hearing Officer promptly for a time and place reasonably convenient to both the Complainant and BHRA. A written notification specifying the date, time, place and the procedures governing the hearing shall be delivered to the complainant or an adult member of his/her household residing in the dwelling unit, or sent by first class mail.

**E. Expedited Grievance Procedure:** In the event that HUD's Due Process Determination is withdrawn or becomes ineffective for any reason, BHRA shall employ an expedited grievance procedure for those grievances covered under Section III. D. (criminal activity and drug related activity). In those cases, requirements and time limits for presenting a grievance and requesting a hearing do not apply, and the Informal Settlement Conference is bypassed. BHRA shall schedule a hearing before the Hearing Officer no sooner than the third business day following service of the eviction notice (sixth day if notice is served by mail) and shall state in the eviction notice to the Resident the date, time and place of the hearing. A failure to appear at the hearing by the Resident (Complainant) shall be governed by Section VII. D., except that the Hearing Officer may only postpone the hearing for up to two (2) business days and may postpone only upon a showing of good cause by the Resident (Complainant) why he/she did not attend the hearing.

**F. Failure to Request a Hearing:** If the Complainant does not request a hearing in accordance with requirements of this section, then BHRA's disposition of the grievance becomes final. The failure to request a hearing does not waive the Complainant's right to contest BHRA's action in disposing of the complaint in an appropriate judicial proceeding.

## **VI. SELECTION OF HEARING OFFICER**

**A. Selection of the Hearing Officer:** The BHRA shall appoint an impartial person or persons other than a person or subordinate who made or approved the BHRA action.

## **VII. PROCEDURES GOVERNING THE HEARING**

**A. Hearing:** The hearing shall be heard before the Hearing Officer.

**B. Due Process:** The Complainant shall be afforded a fair hearing which shall include:

1. The opportunity to examine before the grievance hearing any BHRA documents, including records and regulations, that are directly relevant to the hearing. The Complainant shall be allowed to copy any such document at his/her own expense. If BHRA does not make the document available for examination upon request by the Complainant, BHRA 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;
4. The right to present evidence and arguments in support of his/her complaint, to dispute evidence relied upon by BHRA, and to confront and cross examine all witnesses upon whose testimony or information BHRA relies;
5. A decision based solely and exclusively upon the facts presented at the hearing.

**C. Issue Previously Decided:** 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. Failure to Appear:** If the Complainant or BHRA fails to appear at a scheduled hearing, the Hearing Officer may make a determination to postpone the hearing for no more than five (5) business days or may make a determination that the Complainant has waived his/her right to a hearing. Both the Complainant and BHRA shall be notified of the determination by the Hearing Officer. The determination that the Complainant has waived his/her right to a hearing shall not constitute a waiver of any right the Complainant may have to contest BHRA's disposition of the grievance in an appropriate judicial proceeding.

**E. Entitlement to Relief:** At the hearing, the Complainant must first show entitlement to the relief requested; and thereafter, BHRA must justify its action or failure to act against which the complaint is directed.

**F. Conduct of Hearing:** The hearing shall be conducted informally by the Hearing Officer. Oral or documentary evidence pertinent to the facts and issues raised by the Complainant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The Hearing Officer shall require BHRA, the Complainant, counsel, 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:

1. exclusion from the proceedings; or
2. in a decision adverse to the interests of the disorderly party in the granting or denial of the relief requested, as appropriate.

**G. Transcripts:** The Complainant or BHRA 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. Reasonable Accommodation:** BHRA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, or accessible meeting locations.

If the Complainant is visually impaired, any notice to the Complainant which is required under this grievance procedure must be in an accessible format.

## **VIII. DECISION OF THE HEARING OFFICER**

**A. Decision Results:** The Hearing Officer shall prepare a written decision, together with the reasons for the decision, within a reasonable time after the hearing. A copy of the decision shall be sent to the Complainant and BHRA. A copy of the decision will be retained in the Complainant's Resident file. A copy of such decision, with all names and identifying references deleted, shall also be maintained in a file kept by BHRA and made available for inspection by a prospective Complainant, his/her representative, or the Hearing Officer.

**B. Decision Binding, Exceptions:** The decision of the Hearing Officer shall be binding on BHRA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless BHRA's Board of Commissioners determines within a reasonable time and promptly notifies the complainant of its determination, that:

1. The grievance does not concern BHRA's action or failure to act in accordance with or involving the Complainant's lease or BHRA's regulations, which adversely affect the Complainant's rights, duties, welfare or status; and/or
2. A 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 BHRA.

**C. Other Remedies:** A decision by the Hearing Officer or BHRA Board of Commissioners in favor of BHRA 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, the rights the Complainant may have to a trial de novo or review in any judicial proceedings, which may thereafter be brought in the matter.