
**NEW BEDFORD HOUSING AUTHORITY
OPERATIONS MANUAL**

DATE: **December 3, 2015**
 Revised 12/26/2019

Release No. 24

TO: **All Employees**

SUBJECT: **Grievance and Hearing Procedure**

The Housing Authority Board of Commissioners has adopted the attached Grievance and Hearing Procedure effective immediately

Steven A. Beauregard
Executive Director

GRIEVANCE AND HEARING PROCEDURE

I. Purpose and Scope

This Grievance Procedure is established and implemented by the New Bedford Housing Authority to assure that New Bedford Housing Authority residents are afforded an opportunity for a hearing if a resident disputes, within a reasonable time, any New Bedford Housing Authority action or failure to act involving the resident's lease with the New Bedford Housing Authority, excluding section XI (E) 1, 2 & 3 of the lease, or New Bedford Housing Authority regulations, which adversely affect the individual resident's rights, duties, welfare or status. The grievance procedure outlined in this document is incorporated in the dwelling lease.

II. Applicability

- A. The New Bedford Housing Authority grievance procedure is applicable to all individual grievances as specified in Section III of this document between the resident and the Authority provided that, if a resident uses a hearing in court containing the elements of due process, the New Bedford Housing Authority excludes from the procedure:
1. Any grievance concerning an eviction or lease termination for drug/alcohol activity on or off NBHA property or any activity that threatens the health or safety of other residents or New Bedford Housing Authority staff.
 2. This grievance procedure shall not be applicable to disputes between residents not involving the New Bedford Housing Authority or to class grievances.
 3. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the New Bedford Housing Authority Board of Commissioners.

III. Definitions

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

- A. "Grievance" shall mean any dispute which a resident may have with respect to New Bedford Housing Authority action or failure to act in accordance with the individual resident's lease or New Bedford Housing Authority regulations which adversely affect the individual resident's rights, duties, welfare, or status, except for Section XI (E) 1, 2 & 3 of the lease.

- B. "Complainant" shall mean any resident whose grievance is presented to the New Bedford Housing Authority or the property management office in accordance with Section IV or Section V of this document.
- C. "Elements of Due Process shall mean an eviction action or a termination of residency in a State or local court in which the following safeguards are required:
 - 1. Adequate notice to the tenant of the grounds for terminating the residency and for evictions;
 - 2. Right of the resident to be represented by counsel;
 - 3. Opportunity for the resident to refute the evidence presented by the NBHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the resident may have.
 - 4. A decision on the merits.
- D. "Hearing Officer" shall mean a person selected in accordance with Section V of this document to hear grievances and render a decision with respect thereto.
- E. "Hearing Panel" shall mean a panel selected in accordance with Section V of this document to hear grievances and render a decision with respect thereto.
- F. "Resident" shall mean the adult person (or persons) (other than a live-in aide):
 - 1. Who resides in the unit and who executed the lease with the New Bedford Housing Authority as lessee of the dwelling unit, or, if no such person now resides in the unit,
 - 2. Who resides in the unit, and who is the remaining head of household of the resident family residing in the dwelling unit.
- G. "Resident Organization" includes a resident management corporation.

IV. Informal Settlement of Grievance

Any grievance shall be personally presented, either orally or in writing, to the New Bedford Housing Authority office or to the office of the development in which the complainant resides so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within five (5) working days, and one copy shall be given to the resident and one retained in the New Bedford Housing Authority's resident file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and shall specify the procedures by which a hearing under Section V may be obtained if the complainant is not satisfied.

V. Procedure to Obtain a Hearing

A. Request for Hearing

The New Bedford Housing Authority shall make readily available grievance forms at the New Bedford Housing Authority's main office, all property offices, and all recognized resident's organizations. A grievance shall not have standing and a complaint will not be granted a hearing before the Hearing Panel prior the compliance with SECTION IV, INFORMAL SETTLEMENT OF GRIEVANCE. The complainant shall submit a written request; i.e., grievance form, for a hearing to the New Bedford Housing Authority or the property office within seven (7) days after receipt of the summary discussion pursuant to SECTION IV.

B. Selection of Hearing Officer or Hearing Panel

Grievances shall be presented before a hearing panel. A hearing panel shall be selected as follows:

1. The hearing panel shall have three members: one representative and one alternate chosen by the Housing Authority, one representative and alternate chosen by the local resident's organization, and one impartial member and one alternate impartial member who shall be chosen jointly by the local residents' organization and the Housing Authority. The impartial member and his/her alternate may not be officers, employees, agents, or residents of the Local Housing Authority.

C. Failure to Request a Hearing

If the complainant does not request a hearing in accordance with Section V-A of this document, then the New Bedford Housing Authority's disposition of the grievance under Section IV shall become final, provided that failure to request a hearing shall not constitute a waiver by the complainant of his right to contest the New Bedford Housing Authority's action in disposing of the complaint in an appropriate judicial proceeding.

D. Hearing Pre-requisite

All grievances shall be personally presented, either orally or in writing, pursuant to the informal procedure prescribed in Section IV as a condition precedent to a hearing under this section, provided that, if the complainant shall show good cause why he failed to proceed in accordance with Section IV to the hearing officer or hearing panel, the provisions of the prerequisite may be waived by the hearing officer or hearing panel.

E. Escrow Deposit

Before a hearing is scheduled in any grievance involving the amount of rent as defined in the payments due under the lease which the New Bedford Housing Authority claims is due, the complainant shall pay to the New Bedford Housing Authority 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 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 decision of hearing officer or hearing panel. These requirements may be waived by the NBHA in extenuating circumstances. Unless so waived, the failure to make such payments shall result in a termination of the grievance procedure: Provided, that failure to make payment shall not constitute a waiver of any right the complainant may have to contest the NBHA's disposition of his/her grievance in any appropriate judicial proceeding.

F. Scheduling of Hearings

Upon complainant's compliance with paragraphs (A) (B) (C) (D) (E) of this section, a hearing shall be scheduled by the Hearing Officer or hearing panel promptly for a time and place reasonable and convenient to both the complainant and the New Bedford Housing Authority. The Hearing Panel convenes as necessary when hearings are requested. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the Property Manager of the New Bedford Housing Authority.

G. Rescheduling of Hearing

The resident may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for persons with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the NBHA may request documentation of the “good cause” prior to rescheduling the hearing. The resident may only request to reschedule a hearing with or without good cause two times.

VI. Procedures Governing the Hearing

- A. The hearing shall be held before a hearing officer or hearing panel as appropriate.
- B. The complainant shall be afforded a fair hearing providing the basic safeguards of due process which shall include:
 - 1. The opportunity to examine before the hearing and, at the expense of the complainant, to copy all documents, records, and regulations of the New Bedford Housing Authority that are relevant to the hearing. Any document not so made available after request therefore by the complainant may not be relied on by the New Bedford Housing Authority at the hearing.
 - 2. The right to be presented by counsel or other person chosen as his or her representative.
 - 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 or her complaint, to controvert evidence relied on by the New Bedford Housing Authority or property management, and to confront and cross-examine all witnesses on whose testimony or information the New Bedford Housing Authority or property management relies; and
 - 5. A decision based solely and exclusively upon the facts presented at the hearing.
- C. The hearing officer or hearing panel may render a decision without proceeding with the hearing if the hearing officer or hearing panel determines that the issue has been previously decided in another proceeding.
- D. If the complainant or the New Bedford Housing Authority fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for a period of time not to exceed five (5) business days or

may make a determination that the party has waived his right to a hearing. Both the complainant and the New Bedford Housing Authority shall be notified of the determination by the hearing officer or hearing panel, provided that a determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest the New Bedford Housing Authority's disposition of the grievance in an appropriate judicial proceeding.

- E. At the hearing, the complainant must first make a showing of an entitlement to the relief sought; and, thereafter, the New Bedford Housing Authority must sustain the burden of justifying the New Bedford Housing Authority's action or failure to act against which the complaint is directed.
- F. The hearing shall be conducted informally by the hearing officer or hearing panel, and 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 or hearing panel shall require the New Bedford Housing Authority, 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 or hearing panel to obtain order may result in exclusion proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.
- G. The complainant or the New Bedford Housing Authority 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. NBHA will maintain a log of hearing officer decisions and make the log available to the hearing officer, prospective complainants and his representative. At minimum the log must include: the date of the hearing, the general reason for the hearing and whether the decision was in favor of the complainant.

VII. Decision of the Hearing Officer or Hearing Panel

- A. The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefore, within ten (10) working days after the hearing. A copy of the decision shall be sent to the complainant and the New Bedford Housing Authority.

The New Bedford Housing Authority shall retain a copy of the decision in the resident's folder. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the New Bedford Housing Authority and made available for inspection by a prospective complainant, his representative, or the hearing panel or hearing officer.

- B. The decision of the hearing officer or hearing panel shall be binding on the New Bedford Housing Authority, which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the New Bedford Housing Authority Board of Commissioners determines at its next regular meeting and promptly notifies the complainant of its determination, that
 - 1. The grievance does not concern New Bedford Authority action or failure to act in accordance with or involving the complainant's lease on New Bedford Housing Authority regulations which adversely affect the complainant's rights, duties, welfare or status;
 - 2. The decision of the hearing officer or hearing panel is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the New Bedford Housing Authority.
- C. A decision by the hearing officer, hearing panel, or Board of Commissioners in favor of the New Bedford Housing Authority 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, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings which may thereafter be brought in the matter.

VIII. New Bedford Housing Authority Eviction Actions

If a resident has requested a hearing in accordance with Section V of this document, or a complaint involving a New Bedford Housing Authority notice of termination of the residency and the hearing officer or hearing panel upholds the New Bedford Housing Authority's action to terminate the residency, the New Bedford Housing Authority shall not commence an eviction action in a State or local court until it has served a notice to vacate on the resident; and in no event shall the notice to vacate be issued prior to the decisions of the hearing officer or hearing panel having been mailed or delivered to the complaint. Such notice to vacate must be in writing and specify that if the resident fails to quit the premises within the applicable statutory period or on the termination date stated in the notice of termination, whichever is later, appropriate action will be brought against him; and he may be required to pay court cost and attorney fees.