

Elmira Housing Authority GRIEVANCE PROCEDURE

I. Informal Conference

If Tenant has any dispute with respect to Landlord's action or failure to act in accordance with this lease or Landlord regulations which adversely affect this Tenant's rights, duties, welfare or status, Tenant shall request an informal conference with Landlord. Upon such request, Landlord's Executive Director, Deputy Director or Management Aide shall meet with Tenant within five days of such request in an informal conference so that the grievance may be discussed informally and settled without a hearing.

A summary of such discussion shall be prepared within a reasonable time and one copy shall be given to the Tenant and one retained in the Landlord's Tenant 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 therefor, and shall specify the procedures by which a hearing may be obtained if the Tenant is not satisfied.

II. Request for Hearing

If the Tenant is not satisfied, Tenant shall submit a written request for a hearing to the project office within five (5) *business* days after receipt of the Summary of Discussion. The written request shall specify:

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

If the Tenant does not request such a Grievance hearing, then the Landlord's disposition of the grievance shall become final; provided that failure to request a hearing shall not constitute a waiver by the Tenant of Tenant's right thereafter to contest the Landlord's action in disposing of the complaint in an appropriate judicial proceeding.

III. Conditions Prior to Hearing

All Grievances shall be personally presented either orally or in writing pursuant to the informal procedure set forth above as a condition precedent to a hearing under this section; *Provided*, That if the Tenant shall show good cause why he failed to use the informal conference to the hearing officer or hearing panel, the requirement of the informal conference may be waived by the hearing officer or hearing panel.

Before a hearing is scheduled in any grievance involving the amount of rent, Tenant shall pay to Landlord 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 act or failure to act took place. The Tenant 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. These

requirements may be waived by the Landlord in extenuating circumstances *and in the application of the HUD requirements for a hardship exemption*. Unless so waived, the failure to make such payments shall result in a termination of the grievance procedure. Failure to make payment shall not constitute a waiver of any right the Tenant may have to contest the Landlord's disposition of Tenant's grievance in any appropriate judicial proceeding.

The Grievance Hearing shall be heard by the longest serving Tenant Commissioner on the Housing Authority Board of Commissioners, but if that person is unavailable, then the matter shall be heard by the next available person on the Housing Authority Board in the following order: other Tenant Commissioner, Chairman, Vice Chairman, the longest serving Commissioner available.

IV. Conduct of Hearing

The hearing officer shall promptly schedule the hearing for a time and place reasonably convenient to both Tenant and Landlord. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to Tenant and Landlord.

Tenant 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 Tenant (at 10 cents per copy), to copy all documents, records and regulations of Landlord that are relevant to the hearing. Any document not so made available after request therefor by the Tenant may not be relied on by the Landlord at the hearing;
- (2) The right to be represented by counsel or other person chosen as his or her representative;
- (3) The right to a private hearing unless Tenant requests a public hearing.
- (4) The right to present evidence and arguments in support of Tenant's complaint, to controvert evidence relied on by Landlord or project management, and to confront and cross-examine all witnesses on whose testimony or information the Landlord or project management relies; and
- (5) A decision based solely and exclusively upon the facts presented at the hearing.

The hearing officer 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.

If Tenant or Landlord fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for a period not to exceed five (5) business days or make a determination that the party has waived his, or her, or its right to a hearing. Both Landlord and Tenant shall be notified of the determination by the hearing officer. A determination that Tenant has waived Tenant's right to a hearing shall not constitute a waiver of any right the Tenant may have to contest the Landlord's disposition of the grievance in an appropriate judicial proceeding.

At the hearing Tenant must first make a showing of an entitlement to the relief sought and thereafter the Landlord must sustain the burden of justifying Landlord's action or failure to act against which the Complaint is directed.

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 complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel shall require Landlord, Tenant, 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 from the proceedings or in a decision adverse to the interest of the disorderly party and granting or denial of the relief sought, as appropriate.

The Tenant or Landlord 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.

Upon request of Tenant, Landlord will provide reasonable accommodation for persons with disabilities to participate in the hearing, including where necessary qualified sign language interpreters, readers, accessible locations, or attendants. If the Tenant advises Tenant is visually impaired, any notice to the Tenant will be in an accessible format.

V. Decision and Board Review

The hearing officer shall prepare a written decision, together with the reasons therefor, within a reasonable time after the hearing. A copy of the decision shall be sent to Tenant and Landlord. Landlord shall retain a copy of the decision in the Tenant's folder. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the Landlord and made available for inspection by prospective complainants or their representatives or the hearing officer.

The decision of the hearing officer shall be binding on the Landlord, which shall take all actions, or refrain from any actions, necessary to carry out the decision, unless the Housing Authority's Board of Commissioners determines within a reasonable time, and promptly notifies Tenant of its determination, that

- (1) The grievance does not concern Landlord's action or failure to act in accordance with or involving the complainant's lease or Landlord's regulations, which adversely affect the complainant's rights, duties, welfare or status; or

- (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 Landlord.

A decision by the hearing officer or Board of Commissioners in favor of the Landlord or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, or 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.

VI. Applicability

This procedure does not apply to any grievance concerning a 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 the Authority, or
- B. Any drug-related criminal activity on or near such premises.

At the Board of Commissioners Meeting on June 27, 2002 of the Elmira Housing Authority, the board approved the following amendment to the Housing Authority's Lease Policy, specifically Section 9G-Rent Payments to take effect as of September 1, 2002:

***“All Rent Payments, Security Deposits, Fees, Non Payment Penalties and Other Charges are to be paid in Full upon notice from the Authority. No partial payments will be accepted unless approved by the Executive Director or Deputy Director.*”**

All Rent Payments, Security deposits, Fees, Non payment Penalties and Other Charges are to be paid by personal check, bank check, or money Orders. Cash payments will not be accepted.”

All residents were notified thru correspondence from the Executive Director of this Amendment to Lease Policy.