

## GRIEVANCE PROCEDURE

### DEFINITIONS:

- A. **Grievance:** Any dispute a tenant may have with the Missoula Housing Authority's (MHA) action or failure to act in accordance with the tenant's rental agreement or housing authority regulations which adversely affect the individual tenant's rights, duties, welfare, or status.
- B. **Complainant** shall mean any tenant whose grievance is presented to the MHA in accordance with the policies set forth below.
- C. **Elements of due process** shall mean an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - 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 MHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;
  - 4. A decision on the merits;
- D. **Hearing Officer:** A person selected by the MHA and the tenant to hear grievances and render a decision.
- E. **Hearing Panel:** A three-person panel with one member selected by the MHA, one member selected by the tenant, and a third member selected by the first two members.
- F. **Tenant** shall mean the adult person (or persons) other than a live-in aid:
  - 1. Who resides in the unit, and who executed the rental agreement with MHA 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 tenant family residing in the dwelling unit.
- G. **Resident Organization** includes the Resident Management Association of MHA.

### INFORMAL SETTLEMENT OF GRIEVANCE:

Any grievance shall be personally presented, either orally or in writing, to the MHA Executive Director or his/her designee so that the grievance may be discussed informally and settled without a hearing. The Director or his/her designee with prepare a summary of that discussion within five days and one copy shall be given to the tenant and one retained in the tenant's file. The summary shall specify the names of the participants, date of meeting, nature of the proposed disposition of the complaint and the specific reasons therefor, and the procedure by which a hearing may be obtained by the tenant if he is not satisfied. In case of eviction, request must be received within ten days of notice of eviction.

## **PROCEDURES TO OBTAIN A HEARING:**

- A. Request for hearing: The complainant shall submit a written request for a hearing to the MHA Executive Director or his/her designee within ten days after receiving the summary of the discussion and shall specify:
  - 1. The reason for the grievance.
  - 2. The action or relief sought.
  
- B. Selection of Hearing Officer or Hearing Panel: Within five days after receiving official notice of the grievance, the MHA and the tenant shall select a Hearing Officer or Hearing Panel which will be selected in the following manner:
  - 1. The Hearing Officer shall be an impartial, disinterested person selected jointly by the MHA and the tenant.
  - 2. If the MHA and tenant cannot agree on a hearing officer, they shall each appoint a member of a hearing panel and the members so appointed shall select a third member. If the members appointed by the MHA and tenant cannot agree on a third member, such member shall be appointed by an independent arbitration organization or by any other third party agreed upon by the MHA and tenant.
  - 3. The MHA shall consult the Resident Management Association before MHA appointment of each hearing officer or panel member. Any comments or recommendations submitted by the tenant organization shall be considered by the MHA before the appointment.
  
- C. Failure to Request a Hearing: If the tenant does not request a hearing in accordance with this policy, the MHA's disposition of the grievance shall become final, provided that failure to request a hearing shall not constitute a waiver by the complainant of his right thereafter to contest the MHA's action in disposing of the complaint in an appropriate judicial proceeding.
  
- D. Hearing Prerequisite: All grievances must be personally presented in writing in accordance with this policy. If the tenant shows good cause why he failed to proceed in accordance with this policy, the Hearing Officer or Hearing Panel may waive this requirement.
  
- E. Escrow Deposit: Before a hearing is scheduled in any grievance involving the amount of rent as defined by HUD regulations and MHA policy which the MHA claims is due, the complainant shall pay to the MHA 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 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 or hearing panel. These requirements may be waived by the MHA 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 MHA's disposition of his grievance in any appropriate judicial proceeding.
  
- F. Scheduling of Hearings: Upon complainant's compliance with paragraphs A, D, and E of this section, a hearing shall be scheduled by the hearing officer or hearing panel promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.

## **PROCEDURE GOVERNING THE HEARING:**

- A. The hearing shall be held before a hearing officer or hearing panel, as appropriate.

- B. The tenant shall receive a fair hearing with due process, including:
  - 1. The opportunity to examine before the hearing all documents, records and regulations of the Housing Authority that are relevant to the hearing. The tenant shall be allowed to copy any such document at the tenant's expense. If the MHA does not make the document available for examination upon request by the complainant, the MHA may not rely on such document at the grievance hearing.
  - 2. The right to representation by counsel or other person chosen as his/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/her complaint, to controvert evidence of the Authority and to confront and cross-examine all witnesses.
  - 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 a hearing if they determine that the issue has been previously decided in another proceeding.
- D. If either the MHA or the tenant fail to appear at a scheduled hearing, the officer or panel may decide to postpone the hearing, if either party can show good cause, for up to five business days, or may make a determination that the party has waived his/her right to a hearing.
- E. At the hearing, the tenant must first show that he/she is entitled to the relief sought and the MHA has the burden to justify its actions or failure to act.
- F. The hearing shall be conducted informally and oral or documentary evidence may be received without regard to admissibility such as in judicial proceedings. All parties shall conduct themselves in an orderly fashion. Failure to comply with directions of the hearing officer or panel 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 Authority or the tenant may arrange, in advance, for transcription of the proceedings, at their own expense. Any interested party may purchase a copy of the transcript.
- H. Accommodation of persons with disabilities: The MHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.
  - 1. If the tenant is visually impaired, any notice to the tenant which is required must be in an accessible format.

**DECISION OF THE HEARING OFFICER OR PANEL:**

- A. The hearing officer or hearing panel shall prepare a written decision, with the reasons for the decision stated, within ten days after the hearing. A copy of the decision shall be sent to the tenant and to the MHA. A copy of the decision shall be maintained in the tenant's file. A copy of the decision, with all names and identifying references deleted, shall also be maintained on file by the MHA and made available for inspection by a prospective complainant, his representative, or the hearing panel or officer.
- B. The decision of the hearing officer or panel shall be binding on the MHA unless the Missoula Housing Authority Board of Commissioners determines within a reasonable length of time, and promptly notified the complainant of its determination, that:
  - 1. The grievance does not concern MHA action or failure to act in accordance with or involving the complainant's rental agreement or MHA regulations, which adversely affect the complainant's rights, duties, welfare or status;
  - 2. The decision is contrary to applicable Federal, State or local law, HUD regulations or requirements of the ACC.

- C. A decision by the hearing officer, hearing panel, or Board of Commissioners in favor of the MHA 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 review of the decision through any judicial proceedings, which may thereafter be brought in the matter.