

# WENHAM HOUSING AUTHORITY

## GRIEVANCE PROCEDURE POLICY

### **I. General Overview**

The Grievance Procedure is an administrative method required by the Department of Housing and Community Development (DHCD) regulations (760 CMR 6.08) to deal promptly and reliably with resident complaints. The procedure must be available to housing tenants, participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) and to individuals who file appeals pursuant to 760 CMR 8.00 (Privacy and Confidentiality Regulation).

#### **A.** A grievance is defined as:

(1) an allegation that an **Wenham Housing Authority** employee has acted or failed to act in accordance with the tenant's lease or any statute, regulation, or rule regarding the conditions of tenancy and the alleged action or failure to act has adversely affected the status, rights, duties or welfare of the grievant and/or a household member;

(2) an allegation that an **Wenham Housing Authority** employee has acted or failed to act in accordance with any statute, regulation, or rule regarding the program and that the alleged action or failure to act has adversely affected the status, rights, duties, or welfare of the grievant or a household member;

(3) an appeal by a data subject pursuant to 760 CMR 8.00

**B.** The meaning of a statute, regulation or rule shall not be the subject of a grievance. A dispute between a tenant and another tenant or household member, in which the **Wenham Housing Authority** is not involved, shall not be the subject of a grievance. A grievance shall not be filed by a tenant on behalf of another tenant or any household member of another tenant.

### **II. Initiation of a Grievance**

**A.** A grievance regarding whether good cause exists for terminating a lease shall be initiated by a tenant, in writing, and shall be mailed (postmarked) delivered to the **Wenham Housing Authority** at its main office within seven (7) days after a notice of lease termination has been given to the tenant by the **Housing Authority**

- B. A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed (postmarked) or delivered to the **Wenham Housing Authority** at its main office no more than fourteen (14) days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance, provided the **Wenham Housing Authority** shall have discretion to permit a grievance to be initiated late.
- C. In the event that a tenant files a grievance as to the amount of a redetermined rent within fourteen (14) days of the **Housing Authority** notice of the redetermined rent, the tenant shall continue to pay the rent then in effect (unless the redetermined rent is lower) until final disposition of the grievance. Upon final disposition of the grievance, the tenant shall pay any additional amounts determined to have been due but not paid since the effective date set out in the notice of redetermined rent or **Housing Authority** shall credit the tenant with any amounts paid but determined not to have been due.
- D. The **Wenham Housing Authority** shall permit additional time for initiation of a grievance if the **Wenham Housing Authority** shall find that there was a good reason for late initiation of the grievance and that the late initiation would not cause prejudice to the **Wenham Housing Authority**. The **Housing Authority** shall have available forms on which a grievance may be initiated.

### III. Informal Settlement Conference

Promptly after the initiation of a grievance, unless otherwise provided, the **Wenham Housing Authority** Executive Director or his or her designee shall give the grievant the opportunity to discuss the grievance informally in an attempt to settle the grievance without the necessity of a grievance hearing. The **Wenham Housing Authority** shall give reasonable advance notice to the grievant and his or her representative (if any) of a time and place for an informal settlement conference, unless such a conference shall have taken place when the grievance was delivered to the **Wenham Housing Authority**. At the informal settlement conference, the **Wenham Housing Authority** and the grievant may be represented by a lawyer or by a non-lawyer. If the grievance is resolved at the informal settlement conference, the **Wenham Housing Authority** and grievant shall acknowledge the terms of the resolution in writing. If the grievance is resolved at the informal settlement conference no grievance hearing shall be held. If a grievance is not resolved at the informal conference, a grievance hearing shall be held. Failure to attend an informal settlement conference shall not affect a grievant's right to a grievance hearing.

### IV. Right to a Hearing

A. The **Wenham Housing Authority** hearing officer shall conduct hearings on grievances filed by a public housing tenant, a program participant, or a data subject concerning a grievable matter, provided that no grievance hearing regarding whether good cause exists for terminating a lease shall be requested or held under any of the circumstances specified in MGL c.121B, §32, including the following circumstances:

- (1) in the event of non-payment of rent;
- (2) in the event the **Wenham Housing Authority** has reason to believe that tenant or household member:
  - a. has unlawfully caused serious physical harm to another tenant or employee of the **Wenham Housing Authority** or any other person lawfully on the **Housing** property;
  - b. has unlawfully threatened to cause serious physical harm to any member of a tenant household or an **Wenham Authority** employee or any person lawfully on the **Wenham Housing Authority** property;
  - c. has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or of the **Wenham Housing Authority** or of any person lawfully on the **Authority's** property, if such conduct involved a serious threat to the health or safety of any such person;
  - d. has unlawfully possessed, carried or kept a weapon on or adjacent to the **Wenham Housing Authority** property in violation of MGL c.269 §10;
  - e. has unlawfully possessed or used an explosive or incendiary device on or adjacent to **Wenham Housing Authority** property or has otherwise violated MGL c.266 or 102B;
  - f. has unlawfully possessed. Sold or possessed with intent to distribute a class A, B, or C controlled substance as defined in MGL c.94C §31, on or adjacent to the **Wenham Housing Authority's** property;
  - g. has engaged in other criminal conduct which has seriously threatened or endangered the health or safety of any tenant household, a **Wenham Housing Authority** employee any person lawfully on the **Wenham Housing Authority's** property, or
  - h. has engaged in behavior which would be cause for voiding lease pursuant to the provision of MGL c.139 §19; or
- (3) in the event the **Wenham Housing Authority** has reason to believe a guest of a tenant or a guest of a household member has engaged in the behavior listed in subparagraph 4A (2) and that the

tenant knew beforehand or should have known beforehand that there was a reasonable possibility that the guest would engage in Misconduct.

**V. Hearing Date and Notice of Hearing**

**A.** The **Wenham Housing Authority** shall schedule a grievance hearing regarding whether good cause exists for terminating a lease within fourteen (14) days after the date on which the **Wenham Housing Authority** receives the grievance. At such time, the **Wenham Housing Authority** shall set a date for the hearing no more than thirty (30) days from the date of the request for a grievance hearing (or as soon as reasonably practical thereafter) and at least fifteen (15) days prior to the date of termination. The **Wenham Housing Authority** shall give grievant written notice of the date, time and place at least seven (7) days before the hearing. At the grievance hearing any additional reason(s) for termination of the lease, which arose subsequent to the date of the notice of termination, shall be considered so long as the **Wenham Housing Authority** has given written notice to the grievant as to the additional reason(s) not less than three (3) days before the hearing, or, if the additional reason(s) for termination shall have arisen within such three (3) day period, a subsequent session of the hearing may be scheduled on not less than three (3) days notice to consider such reason(s). In lease terminations if grievant is entitled to request a grievance hearing and has made a timely request, the **Wenham Housing Authority** shall not file a summary process summons and complaint seeking an eviction pending the hearing and a decision or other resolution in the **Wenham Housing Authority's** favor.

**B.** A hearing of a grievance regarding an issue other than lease termination shall be scheduled as soon as reasonable convenient following receipt of the grievance. The **Wenham Housing Authority** shall give reasonable advance written notice of the time and place of the hearing to the grievant and to his or her representative, if any is known.

**C.** The **Wenham Housing Authority** or the Presiding Member may reschedule a hearing by agreement of the **Wenham Housing Authority** and the grievant; or upon a showing by the grievant or by the **Wenham Housing Authority** that rescheduling is reasonably necessary.

**VI. Pre-Hearing Examination of Relevant Documents**

Prior to a grievance hearing the **Wenham Housing Authority** shall give the grievant or his or her representative a reasonable opportunity to examine **Wenham Housing Authority** documents which are directly relevant to the grievance. Following a timely request, the **Wenham Housing Authority** shall provide copies of such documents to grievant and for good cause (including financial hardship), may waive the charge for the copies.

## **VII. Persons Entitled to be Present**

The grievance hearing shall be private unless the grievant requests that it be open to the public. If the grievant requests an open hearing, the hearing shall be open to the public unless the Presiding Member of the grievance panel otherwise orders. The **Wenham Housing Authority** and the grievant shall be entitled to specify a reasonable number of persons who may be present at a private hearing. A challenge to the presence of any such person shall be decided by the Presiding Member. At the grievance hearing, the **Wenham Housing Authority** and the grievant may be represented by a lawyer or by a non-lawyer. Each person present at the hearing shall conduct himself or herself in an orderly manner or he or she may be excluded. If the grievant misbehaves at the hearing, the hearing panel by majority vote may take other appropriate measures to deal with the misbehavior including dismissing the grievance.

## **VIII. Procedure at Grievance Hearings**

The hearing panel shall conduct the grievance hearing in a fair manner without undue delay. The Presiding Member shall initially take appropriate steps to define the issues. Thereafter, relevant information, including testimony of witnesses and written material, shall be received regarding such issues. Both the grievant and the **Wenham Housing Authority** shall be entitled to question each other's witnesses. Procedure at the hearing shall be informal, and formal rules of evidence shall not apply. The hearing shall be tape recorded. The panel members may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and **Wenham Housing Authority** rules and policies. The panel members may request the **Wenham Housing Authority** or the grievant to produce additional information which is relevant to the issues or which is necessary for a decision to be made provided that the other party is provided an opportunity to respond to such additional information.

The tapes of the hearing shall be maintained by the **Wenham Housing Authority** until any applicable appeals have been decided. During that time grievant and or his or her representative may listen to the tapes at the **Wenham Housing Authority's** offices.

## **IX. Written Decision by the Grievance Panel**

Within fourteen (14) days following the hearing or as soon thereafter as reasonably possible, the hearing panel shall provide the **Wenham Housing Authority** with a written decision on the grievance, describing the factual situation and ordering whatever relief, if any, that shall be appropriate under the circumstances and under applicable laws, regulations, rules and/or policies. The decision shall be made by a vote of at least a majority of the panel members who heard the hearing. The decision shall be made by a vote of at least a majority

of the panel members who heard the hearing. The decision shall be based on the information at the grievance hearing and such additional information as may have been provided to the hearing panel at its request. The **Wenham Housing Authority** shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative if any. A copy of the decision (with names and personal identifiers deleted) shall hereafter be maintained at the **Wenham Housing Authority** and shall be open to public inspection.

**X. Review by the Wenham Housing Authority's Board**

In cases where the decision of the hearing panel concerns whether good cause exists for terminating a lease, there shall be no review by the **Wenham Housing Authority's** Board. In other cases, in the event that the grievant or the **Wenham Housing Authority** believes that:

- (a) the decision of the hearing panel is not supported by the facts;
- (b) the decision does not correctly apply the terms of the lease or applicable laws, regulations, rules and/or policies; or
- (c) the subject matter is not grievable;

within fourteen (14) days of mailing or other delivery of the decision, the grievant or the **Wenham Housing Authority** may request review of the decision by the **Wenham Housing Authority's** Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the **Wenham Housing Authority** and grievant to make oral presentations and/or submit documentation. The Board may also permit the hearing panel to make a presentation. The Board's review shall be at an open meeting unless an executive session is warranted pursuant to the Open Meeting Law. The decision of the Board shall be in writing and shall explain its reasoning. If a written decision is not rendered within forty-five (45) days from the date a review is requested, the decision of the Board, when rendered, shall specify a reason showing that there has been no undue delay.

**XI. Review by the Department of Housing and Community Development**

In the event that the **Wenham Housing Authority's** Board shall make a material change in a decision of the grievance panel, upon written request of the grievant, made to DHCD within fourteen (14) days of mailing or other delivery of the Board's decision, DHCD shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board, DHCD shall mail copies of its decision to the **Wenham Housing Authority** and the grievant or to their attorneys.

**XII. Effect of a Decision on a Grievant**

The final decision on a grievance (after any properly requested administrative reviews have been decided) shall be binding between the **Wenham Housing Authority** and the grievant with respect to the particular circumstances involved in the grievance, provided that if a court has jurisdiction to determine a matter which has been subject to a decision on a grievance, the court's determination on the matter shall supersede the decision on the grievance. In the event the hearing panel's decision on a grievance determines that good cause exists for terminating a lease, the **Wenham Housing Authority** may, upon receipt of the decision, file a summary process summons and complaint, and there shall be no review by the Board or DHCD. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court. As between the **Wenham Housing Authority** and any person who was not a grievant, the decision on a grievance shall have no binding effect.

**Policy Adopted on: February 27, 2019**