

GRIEVANCE POLICY

General Overview

The person filing a grievance is called the grievant.

No tenant shall file a grievance on behalf of another tenant or any household member of another tenant **without the written approval of that tenant.**

Not subject to grievances are:

- The meaning of a statute, regulation, or rule.
- A dispute between a tenant and another tenant or household member, in which the local housing authority (LHA) is not involved.

Definition of Grievance

A grievance is:

(1) an allegation that the GBHA or its employee, whether full- or part-time, or a contracted worker acted or failed to act in accordance with the tenant's lease or any statute, regulation, policy or rule regarding the conditions of tenancy and that the alleged action or failure to act has adversely affected the status, rights, duties or welfare of the grievant and/or household member;

(2) an allegation that the GBHA or its employee, whether full- or part-time, or a contracted worker has acted or failed to act in accordance with any statute, regulation, policy or rule 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; and

(3) an allegation pursuant to 760 CMR 8.0, "Privacy and Confidentiality."

PROCESS OF GRIEVANCE FILING

A grievant shall submit the grievance in writing, providing the reason for it, the date on which it occurred and a proposed resolution. The GBHA office shall also provide on a table or bulletin board in community mail rooms at each facility forms on which to file a grievance.

A tenant shall submit a grievance regarding any matter other than leases no more than fourteen business (14) days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance.

The GBHA may extend the submission time for a grievance if the ED finds there was a good reason for late initiation of the grievance and that late filing would not cause prejudice to the GBHA.

Grievances Involving Leases

A tenant shall submit a grievance regarding termination of a lease or of participation in the MRVP or AHVP seven (7) business days after receiving such notice of lease termination from the GBHA. The number of days shall be determined by the postmark of the mailed termination notice. If the grievance is delivered to the office, staff shall give the tenant a signed receipt with the time and date of such delivery.

A tenant who files a grievance about the amount of redetermined rent within fourteen (14) days of notice of the re-determined rent shall continue to pay the rent then in effect until final disposition of the grievance, unless the redetermined rent is less than had been paid.

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 re-determined rent.

Informal Settlement Conference

Within five (5) business days after a grievance is filed, the GBHA ED shall schedule a meeting with the grievant. The meeting shall be held within ten (10) business days of the filing of the grievance. The GBHA and the grievant may each have representatives, including lawyers, at the informal settlement conference.

Failure to attend the meeting shall not affect a grievant's right to a grievance hearing.

A taped recording of the meeting or written minutes shall be maintained by the GBHA with a copy given to the grievant within ten (10) business days.

Any resolution shall be provided in writing and signed by both the ED and the grievant. If a grievance is not resolved at the informal conference,, a grievance hearing shall be held.

Right to a Hearing

The GBHA's designated Hearing Officer shall conduct hearings.

The grievant shall notify the GBHA office in writing that a hearing is requested.

No grievance hearing may be requested or held under any circumstances specified in MGL c. 121B, 32 if the GBHA ED has reason to believe that tenant or household member has:

- unlawfully caused or threatened to cause serious physical harm to another GBHA tenant or employee or any other person lawfully on the GBHA property or unlawfully destroyed, vandalized or stole property of any member of a tenant household or of the GBHA or of any person lawfully on the GBHA's property, if such conduct involved a serious threat to the health or safety of any such person;
- has unlawfully possessed, carried or kept a weapon on or adjacent to the GBHA's property in violation of MGL c.269 810;
- has unlawfully possessed or used an explosive or incendiary device on or adjacent to the GBHA's property or has otherwise violated MGL c.266 sections 101,102,102A or 102B;
- has unlawfully possessed, sold or possessed with intent to distribute a Class A, B, or C controlled substance, as defined in MGL c.94C 831, on or adjacent to the LHA's property;
- has engaged in other criminal conduct which has seriously threatened or endangered the health of safety of any member of a tenant household, a GBHA employee, or any person lawfully on the GBHA property, o has engaged in behavior which would be cause for voiding the lease pursuant to the provisions of MGL c.139 19; or
- in the event the GBHA has reason to believe that a guest of a tenant or a guest of a household member has engaged in any of the behavior listed in subparagraph 4 A (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.

Hearing Date and Notice of Hearing

The GBHA shall schedule a hearing within fourteen (14) days after the date on which the GBHA office receives the grievance and shall immediately notify the grievant in writing of the date, time and place of the hearing.

The hearing date shall be no more than thirty (30) days from the date of the request for a grievance hearing and at least fifteen (15) days prior to the date of termination.

Prior to a grievance hearing the LHA shall give the grievant or his or her representative at least fourteen (14) days to examine GBHA documents directly relevant to the grievance.

The GBHA shall provide copies of such documents to grievant and may waive any charge for copies.

Lease Terminations.

In lease terminations, if grievant is entitled to request a grievance hearing and has made a timely request, the GBHA shall not file a summary process summons and complaint seeking an eviction pending the hearing and a decision or other resolution in the GBHA's favor.

Documents provided shall include any additional reason(s) for termination of the lease that arose after the date of the notice of termination and shall be considered so long as the GBHA has given written notice to the grievant about the additional reason(s) not less than three (3) days before the hearing, or, if the additional reason(s) for termination shall have arisen less than three (3) days notice to consider such reason(s).

Appointment of Hearing Officer

All grievance hearings and determinations of grievances shall be handled by a single Hearing Officer, appointed to a term not to exceed seven years and to serve all residents of state-aided public housing and all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the GBHA.

The GBHA shall from time to time nominate one or more persons to serve as Hearing Officer(s) to preside at conduct hearings and to render prompt and reliable written determinations of matters at issue.

The GBHA shall submit its written nomination(s) for Hearing Officer(s) to the Local Tenant Organization (LTO). Each nomination shall include a resume of the nominee and the length of the term for which he or she is nominated.

Within five (5) business days of receipt of a nomination, the LTO may make a written request to the GBHA to interview the nominee. Following such a request, the GBHA ED shall make prompt arrangements for an interview between the nominee and the LTO(S) which made the request.

Within thirty (30) days after the receipt of a nomination or within five (5) business days after its interview of a nominee, whichever is later, any LTO may approve or disapprove the nominee. If all LTO(s) approve a nominee or if no LTO disapproves a nominee within the requisite time, the nominee shall become a Hearing Officer upon written acceptance mailed or delivered to the GBHA, which shall then notify the LTO(S).

Each Hearing Officer shall annually certify in writing to the GBHA that he or she

Is willing and able to serve. Failure to so certify within ten (10) days of receipt of a written request by the GBHA shall render the Hearing Officer's position vacant.

Impartiality of the Hearing Officer

No Hearing Officer or a member of his or her family shall have or shall appear to have any direct personal or financial interest in the outcome of any matter before him or her. No Hearing Officer shall be related by blood or marriage to any party or to any person who gives evidence as to facts which are disputed by the parties. No Hearing Officer may determine matters which directly concern his or her own housing or the housing of a family member or his or her own status of a family member in that housing.

Each Hearing Officer shall determine any matter at issue impartially and objectively on the basis of the evidence and applicable law.

Any Hearing Officer, who shall be or shall appear to be unable to determine any matter impartially and objectively shall remove himself or herself as Hearing Officer, whether or not he or she has been requested to do so.

Removal of the Hearing Officer

A Hearing Officer may be permanently removed from office at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias or partiality.

The GBHA and the LTO(S) may agree on removal after notice to the Hearing Officer and the opportunity for him or her to be heard. In the absence of agreement, DHCD may remove a Hearing Officer for cause upon a request by the GBHA or an LTO.

Prior to removing a Hearing Officer, DHCD shall require a detailed, written specification of the reason(s) for removal if it finds the specification to set out good and sufficient cause, it shall give the Hearing Officer, the GBHA and the LTO(s) the opportunity to be heard. DHCD's decision whether to remove a Hearing Officer shall be in writing and mailed to the Hearing Officer, GBHA and the LTO(S). If a written specification fails to detail good and sufficient cause for removal, DHCD shall deny a request for removal without a hearing.

Appointment of Interim Hearing Officer

If a Hearing Officer is not able and willing to serve for one or more pending matters and if use of the **specified** appointment process would likely cause significant delay with potential adverse consequences to either the GBHA or the grievant, the GBHA, with notice to the LTO(s), may request that DHCD name an interim Hearing Officer. Such a request shall be in writing and shall specify the reason for it.

The LTO(S) shall be given a reasonable opportunity to comment on the request. If DHCD finds there to be a reasonable need for an interim Hearing Officer, DHCD shall name an interim Hearing Officer. DHCD may name a previously disapproved nominee to serve as interim Hearing Officer if an LTO's stated reasons for disapproval did not constitute good and sufficient cause for disapproving the nominee.

An interim Hearing Officer shall have all the powers and duties of a Hearing Officer and shall serve in the pending matters for which he or she was appointed.

An interim Hearing Officer may be nominated by the GBHA to be Hearing Officer in the manner set out herein.

Procedure for Grievance Hearing

The grievance hearing shall be private unless the grievant requests that it be open to the public.

Both the GBHA and the grievant may specify a reasonable number of persons who may attend a private hearing. The Hearing Officer shall determine any challenge to the presence of any such person.

Both the GBHA and the grievant may have and other representation.

Procedure at the hearing shall be informal, and formal rules of evidence shall not apply. The hearing shall be tape recorded. The tape(s) of the hearing shall be maintained by the GBHA until any applicable appeals have been decided, when it shall be filed and kept in the GBHA office.

The grievant and his or her representative may listen to the tapes at the GBHA's offices. The grievant and his or her representative may also record the meeting.

Scheduling

The GBHA shall be responsible for scheduling and other administrative matters, including all necessary notices. The GBHA shall consult with the Hearing Officer and shall schedule hearings at times convenient for him or her.

The Hearing Officer shall take appropriate measures to deal with misbehavior during the hearing. This may include dismissing the grievance or excluding the person causing a disturbance.

The Hearing Officer shall conduct the grievance hearing in a fair manner without undue delay. The Hearing Officer shall take appropriate steps to define the issues and to receive relevant information, including testimony of witnesses and written material.

The grievant and the GBHA may question each other's witnesses. The Hearing Officer also may question witnesses and take notice of matters of common knowledge and applicable laws, regulations and GBHA rules and policies.

The Hearing Officer members may request the GBHA or the grievant to produce more information relevant to the issues or necessary for a decision, provided the other party has an opportunity to respond to such additional information.

Written Decision by the Grievance Panel

Within fourteen (14) days following the hearing or as soon thereafter as reasonably possible, the Hearing Officer shall provide the GBHA and the grievant and his or her representative with a written decision on the grievance, describing the factual situation and ordering appropriate relief.

The decision shall be based on the information at the grievance hearing and such additional information as may have been provided to the Hearing Officer.

A copy of the decision, with names and personal identifiers deleted, shall thereafter be maintained at the GBHA as a public document.

Review by the GBHA's Board

In cases where the decision of the Hearing Officer concerns whether good cause exists for terminating a lease, there shall be no review by the GBHA's Board of Commissioners. In other cases, the grievant or the GBHA may within fourteen (14) days of receiving the decision, request review of the decision by the GBHA's Board of Commissioners if the grievant or the GBHA ED 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,

The Board within five (5) business days of receiving such request shall decide whether to uphold, set aside or modify the decision after the GBHA ED and grievant have made oral presentations during a public meeting, unless an executive session is warranted pursuant to the Massachusetts Open Meeting Law.

The meeting shall be recorded and the GBHA shall keep that recording.

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.

Review by the Department of Housing and Community Development

If the Board makes a material change in a decision of the Hearing Officer, the grievant, may within fourteen (14) days, by mail or other delivery, appeal the Board's decision to DHCD.

DHCD shall review the decision of the Board and render a written decision upholding, setting aside or modifying it. DHCD shall mail copies of its decision to the GBHA ED and the grievant or to their attorneys.

Effect of a Decision on a Grievant

After all properly requested administrative reviews have been decided, the final decision on a grievance shall be binding on the GBHA and the grievant with request to the particular circumstances involved in the grievance, provided that if a court has jurisdiction to determine a matter which has been subject to 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 GBHA 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.

The decision on a grievance shall have no binding effect on the GBHA and any person who was not the grievant.

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This revision approved by Great Barrington Housing Authority Board of Commissioners on Jan. 19, 2023

