

**PENNINGTON COUNTY HOUSING AND REDEVELOPMENT COMMISSION
GRIEVANCE PROCEDURE**

I. DEFINITIONS:

- (1) "Grievance" shall mean any dispute which a tenant shall have with respect to the commission, the actions of its management, or employees concerning action or failure to act in accordance with the individual tenant's lease or Commission regulations which adversely affect the individual tenant's rights, duties, welfare, or status.
- (2) "Complainant" shall mean any tenant whose grievance is presented to the Commission or at the management office in accordance with this procedure.
- (3) "Tenant" shall mean the adult person (or persons):
 - (1) Who resides in the unit, and who executed the lease with the Commission as lessee of the dwelling unit, or, if no such persons now resides in the unit,
 - (2) Who resides in the unit, and how is the remaining head of household of the tenant family residing in the dwelling unit.
- (4) "Hearing" Panel" shall mean a panel selected in accordance with the provisions of this grievance policy.
- (5) "Commission" shall mean the Pennington County Housing and Redevelopment Commission, its director, and employees.

II. INFORMAL SETTLEMENT:

Any grievance shall be personally presented, either orally or in writing, to the Commission office 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 by the Commission's representative and one (1) copy shall be given to the Tenant and one retained in the Commission's tenant file. The summary shall specify the name of the participants, dates of meeting, the nature of the proposed disposition of the complaint, and the specific reasons therefore, and shall provide a written explanation to Tenant of Tenant's right to an impartial hearing to resolve the dispute and the procedure by which such a hearing may be attained. If the Complainant is satisfied with the disposition of the matter, no further complaint or proceedings need be filed.

III. REQUEST FOR HEARING:

If the Complainant is not satisfied with the action proposed by the informal settlement of the grievance, the Complainant may request a hearing according to the following procedure:

- (6) The Complainant shall submit a written request for a hearing to the Commission management office within a reasonable time after receipt of the summary of the discussion and proposed informal settlement, which reasonable time shall not exceed five (5) working days exclusive of the date of the receipt of such written summary. The written request for hearing shall specify:
 - (1) The reasons for the grievance; and
 - (2) The action or relief sought.
- (7) The grievance hearing shall be conducted by an impartial hearing panel appointed as hereinafter provided. The hearing shall be held within five (5) working days of the date of receipt of the request for hearing.
- (8) If the Complainant does not request a hearing in accordance with this section within five (5) working days of the receipt of the written summary of the informal settlement discussion, then the disposition of the grievance under the informal settlement written summary shall become final provided that failure to request a hearing shall not constitute a waiver by the Complainant of his or her right thereafter to contest the Commission's action in disposing of the complaint in an appropriate judicial proceeding.
- (9) In order to obtain a hearing, all grievances must first be presented either orally or in writing for informal settlement pursuant to Section II above, provided however, that if the Complainant shall show good cause why he or she failed to proceed in accordance with the informal settlement procedure, the provisions of this subsection may be waived by the hearing panel.
- (10) Before a hearing is scheduled in any grievance involving the amount of rent which the Commission management claims is due, the Complainant shall pay to the Commission 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 panel. These requirements may be waived by the Commission in extenuating circumstances. However, 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 Commission's disposition of this grievance in any appropriate judicial proceeding.
- (11) Upon Complainant's compliance with Paragraphs (A), (D), and (E) of this section, a hearing shall be scheduled by the Commission Management with the hearing panel within five (5) working days of the date of the filing of the complaint. A written notification specifying the time, place, and procedures governing the hearing shall be delivered to the Complainant and the appropriate Commission official by the Commission Management.

IV. THE HEARING PANEL:

- (12) The Commission shall annually appoint at least five (5) tenants as eligible panel members. The Commission shall annually give notice of its intention to appoint eligible panel members. Such notice shall be given by posting on bulletin boards and listing in the newsletter to tenants for at least thirty (30) days prior to the date of selection. Any comments or recommendations submitted by tenants or tenant organizations shall be considered by the Commission before the appointment.
- (13) The panel for a filed grievance shall be selected in the following manner. The tenant may select one (1) member of the hearing panel from those designated as eligible for panel service as set forth above, and the Commission management may select one (1) panelist from authorized panel members and the two (2) thus selected, shall select a third (3) panel member from the authorized list of panelists. The three (3rd) from the authorized list of panelists. The three (3) panel members as thus constituted shall conduct the hearing in accordance with these regulations and a majority of two (2) votes shall be required for any decision by the panel in any grievance hearing.
- (14) There shall be no relatives of the Complainant on the Panel which hears his or her complaint.
- (15) It shall be the responsibility of the Commission Management to notify the hearing panel members for each particular case and to have the panelist represent at the time and place of the hearing.
- (16) The Commission shall reimburse the panelist for any expenses reasonable incurred by them and discharging their duties on the hearing panel.

V. NOTICES:

Any notice required by these rules will be sufficient if delivered in writing to the Complainant personally or to an adult member of his or her family living with the Complainant, or if sent by first class mail, postage prepaid and properly addressed to the Complainant. Notice to the Commission and either delivered to a Commission employee at the central office or mailed to the management office at 1805 West Fulton, Rapid City, SD 57702, with first class postage prepaid.

VI. HEARING:

- (17) The hearing shall be held before the hearing panel selected in accordance with Section III above.
- (18) The parties shall be entitled to a fair hearing of the grievance before the hearing panel which shall include:

- (1) The opportunity to examine before the grievance hearing any Commission documents, including records and regulation that are directly relevant to the hearing. The tenant shall be allowed to copy any such document at the tenant's expense. If the Commission management does not make the document available for examination upon request by the Complainant, the Commission may not rely on such documents at the grievance hearing.
- (2) The right to be represented by counsel or other person chosen as the parties representative and to have such person make statements on that parties' behalf.
- (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 the complaint or grievance, to controvert evidence relied upon by the other party and to confront and cross examine all witnesses on whose testimony or information the Commission management relies.
- (5) The right to bring as witnesses any one that a part feels will be helpful to the issues in the hearing.
- (6) A decision based solely and exclusively upon the facts presented at the hearing.
- (19) The hearing panel may render a decision without proceeding with the hearing if the panel determines that the issue has been previously decided in another proceeding.
- (20) If the Complainant or the Commission management fails to appear at a scheduled hearing, the hearing panel may make a determination to postpone the hearing for not to exceed five (5) business days or may make a determination that the party has waived his or her right to a hearing. Both the Complainant and the Commission management shall be notified of the determination by the hearing panel: provided that a determination that the Complainant has waived his or her right to hearing shall not constitute a waiver of any right that the Complainant may have to contest the disposition of the grievance in an appropriate judicial hearing.
- (21) At the hearing, the Complainant must first make a showing of an entitlement to the relief sought and thereafter, the Commission management must sustain the burden of justifying its action or failure to act against which the complaint is directed.
- (22) The hearing shall be conducted informally by the 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 panel shall require the Commission management, the Complainant, counsel, and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party in granting or denial of relief sought as appropriate.

- (23) The Complainant or the Commission management 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.
- (24) The panel and Commission management shall provide reasonable accommodation for persons with disabilities to participants in the hearing as required by appropriate regulations.

VII. DECISION OF THE HEARING PANEL:

- (25) The hearing panel shall prepare a written decision together with the reasons therefore, within five (5) business days after the hearing. A copy of the decision shall be sent to the Complainant and to the Commission management in the manner required for notice under this grievance procedure. Commission management shall retain a copy of the decision with all names and identifying references deleted shall be maintained on file by the Commission and made available for inspection by a prospective Complainant, his representative, or the hearing panel.
- (26) The decision of the hearing panel shall be binding upon the Commission which shall take all actions or refrain from any action necessary to carry out the decision unless the Commission determines within five (5) working days or receipt of such decision and promptly notifies the Complainant of its determination that:
 - (1) the grievance does not concern Commission action or failure to act in accordance with or involving the Complaint's lease on commission regulations, which adversely affects the Complainant's rights, duties, welfare or status;
 - (2) the decision of the hearing panelist contrary to applicable federal, state, or local law, HUD regulations or requirements of the annual contributions contract between HUD and the Commission.
- (27) A decision by the hearing panel in favor of the Commission or which denies the relief requested by the Complainant in whole or in part, shall not constitute a waiver or, 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.
- (28) If the hearing panel's decision is to uphold the Commission management decision to evict a tenant, an action by the Commission management decision to evict a tenant, an action by the Commission to recover possession may not be commenced until after the tenant's rights to occupy and use the premises have been terminated by the proper statutory three-day notice to quit. The statutory demand to vacate may not be given to the tenant before the date on which the hearing panel's decision upholding the proposed eviction is delivered or mailed to the tenant.

- (29) The notice to quit and vacate must inform the tenant in writing that:
- (1) If he or she does not move within the statutory notice period, an eviction action will be filed in Court against him or her.
 - (2) If suit is filed and the Commission prevails in such suit, that the tenant will be required to pay court costs and attorney's fees as allowed by the Court.
 - (3) If the tenant chooses to contest the eviction in Court, the Commission will proceed with proof that its' reasons are good cause for eviction under applicable laws, rules and regulations.