

NEW YORK CITY HOUSING AUTHORITY
TERMINATION OF TENANCY PROCEDURES*

The purpose of publishing these procedures is to enable a tenant who faces termination of tenancy proceedings by the New York City Housing Authority to know the legal basis of such administrative proceedings, the procedures which the Authority will follow, and to enable the tenant to prepare an appropriate defense to such termination of tenancy proceedings.

The following procedures apply to termination of tenancy by the New York City Housing Authority to conform with the opinion of the United States Court of Appeals for the Second Circuit and the action of the United States District Court for the Southern District of New York in the case of *Escalera, et al v. New York City Housing Authority*, 425 F.2d 853, certiorari denied, 400 U.S. 853 (1970), consent decree on remand docketed March 25, 1971, 67 Civ. 4307 (S.D.N.Y. 1971, D.J. Mansfield), and the consent judgements of January 26, 1976 in the United States District Court for the Southern District of New York cases of *Joseph Tyson Sr. v. New York City Housing Authority and Myrdes Randolph v. New York City Housing Authority*, 73 C 859, 74 C 1856, 74 C 2556, 74 C 2617 (S.D.N.Y. 1976, Metzner, J.).

GROUNDINGS FOR TERMINATION OF TENANCY

1. These procedures will deal with termination of tenancy brought on any of the following grounds: Non-Desirability, Breach of Rules and Regulations, Chronic Breach of Rules and Regulations, Chronic Delinquency in the Payment of Rent, Non-Verifiable Income, Assignment or Transfer of Possession, and Misrepresentation.

- A. NON-DESIRABILITY** is defined by the Authority as the conduct or behavior of the tenant or any person occupying the premises of the tenant which constitutes:
 - (1) a danger to the health and safety of the tenant's neighbors
 - (2) conduct on or in the vicinity of the Authority premises which is in the nature of a sex or morals offense
 - (3) a source of danger or a cause of damage to the employees, premises or property of the Authority
 - (4) a source of danger to the peaceful occupation of other tenants, or
 - (5) a common law nuisance.
- B. BREACH OF RULES AND REGULATIONS.** The violation by the tenant or any person occupying the premises of the tenant of any applicable rule, regulation or resolution of the Authority. The tenant will be given an opportunity to cure the breach.
- C. CHRONIC BREACH OF RULES AND REGULATIONS.** The repeated violation by the tenant or any person occupying the premises of the tenant of Authority rules and regulations or a single repetition of a violation of any Authority rule or regulation which the tenant previously had reported to have been cured by compliance. The tenant will not be given an opportunity to cure the breach.
- D. CHRONIC DELINQUENCY IN THE PAYMENT OF RENT.** The repeated failure or refusal of the tenant to pay rent when due.
- E. NON-VERIFIABLE INCOME.** The failure, neglect or refusal of a tenant to furnish the Authority verification satisfactory to the Authority of the income of the tenant, or to keep records of income and disbursements or submit the same to an audit in accordance with the requirements and directives of the Authority.
- F. ASSIGNMENT OR TRANSFER OF POSSESSION.** The possession and use of a project apartment by a person or persons other than the tenant of record, without Authority permission or consent after the tenant of record has moved from or no longer resides in the apartment.
- G. MISREPRESENTATION.** The willful misstatement to or concealment from the Authority by the tenant of any material fact bearing or relating to any determinant of the tenant's eligibility for admission or continued occupancy or bearing upon or relating to the rent to be paid by the tenant.

PROJECT MANAGER INTERVIEW

2. The project manager or his representative will interview the tenant in order to discuss the problem which may lead to termination of tenancy, seek to ascertain the facts involved, and, when appropriate, seek to assist the tenant by securing outside help.

THE TENANCY ADMINISTRATOR

3. If remedial action by the Manager fails, or if the Manager believes that termination of tenancy is the appropriate course of action, he shall submit the entire file, together with his/her written recommendations and the reason therefor, to the Tenancy Administrator for review and appropriate action. If the case is based on non-desirability, the Manager shall consider in reviewing the file, among other things, the extent of the impact of the behavior of the tenant's family upon the project. If the Tenancy Administrator finds, after review of the file that a basis for termination of tenancy proceedings exists, the file shall be referred to the Authority's Law Department for the preparation of a Notice of Charges.

NOTICE OF CHARGES

4. The Law Department shall prepare a Notice of Charges in which there shall be set forth the specific grounds for the proposed termination action. Where the charges involve non-desirability, the specific subsection(s) of the regulation shall be set forth which are claimed to have been violated. A copy of these procedures shall be enclosed with the Notice to the tenant. Such Notice shall give the tenant at least 15 days advance notice of the date fixed for a hearing to be held before a Hearing Officer designated by the Authority. It shall request the tenant to answer the charges and to signify his/her intention to attend the hearing, in writing, at least 5 days prior to the date set for the hearing. The Notice shall be served upon the tenant or any adult member of his/her family, or by certified mail, postpaid, and addressed to his/her apartment in the project. A copy of the Notice shall be furnished to the Hearing Officer, who shall calendar the hearing for the time specified therein.

THE HEARING

5. Such Hearing Officer shall be an impartial disinterested attorney admitted to practice before the Courts of New York State appointed in a Civil Service title approved by the New York City Civil Service Commission. Until such title is so approved, the Hearing Officer shall continue to be appointed in accordance with the existing procedures for the appointment of Hearing Officers (Tenancy). Prior to the completion of the hearing and his/her written decision upon the charges set forth in the Notice, the Hearing Officer shall not have had any part in the proceeding or access to the files, information, records or recommendation upon which the proposed termination action is to be based. The Hearing Officer shall be liberal in granting reasonable adjournments requested by the tenant or his/her representative for good cause shown, to assure that there be no doubt that the tenant is afforded every due process right provided by the federal court decree.

6. The Hearing Officer shall conduct a hearing at which the Law Department shall present the case.
 - (a) The Hearing Officer shall hear witnesses and receive oral and written evidence in proof by the Authority of the grounds specified in the Notice, and of like evidence of the answer offered by the tenant. Cross-examination shall be permitted. Technical rules of evidence shall not be enforced, but the proof offered shall be relevant to and based upon the grounds involved.
 - (b) The Authority will permit the tenant's attorney or his/her representative (or, with the specific permission of the Authority, which shall not be unreasonably withheld, the tenant pro se) to examine such matter in the tenant folder as relates to the issues in the administrative termination proceeding (excluding names of persons not involved in the pending proceeding), upon request, in advance of the hearing, by appointment at the Authority's Central Office. Any matter not so made available after request therefor may not be relied on by the Authority at the hearing.
 - (c) Subpoenas shall be issued at the request of the tenant or his/her representative, where appropriate.
 - (d) If the charges brought against the tenant are based upon the non-desirable acts, conduct or behavior of a person (the "Offender") other than the tenant, it is the Housing Authority's responsibility to prove that the offender occupied the premises at the time of the offense. However, even if the Housing Authority proves this, the tenant may still show that the offender has permanently moved out by the time of the hearing.

The tenant may be able to avoid the penalty of losing his or her apartment if:

- (i) at the hearing on the charge(s), the tenant claims the offender has left the tenant's apartment permanently; and
- (ii) the tenant presents evidence to the Hearing Officer to support this claim.

Evidence that the tenant presents in support of this claim (that either the offender did not occupy the apartment at the time of the offense or has since permanently moved out), such as a signed lease and/or rent receipts at another address, or a letter from Welfare or Social Security showing the offender's new address, shall be proof that the offender did not or does not occupy the tenant's apartment, except that the Authority may challenge this evidence before the Hearing Officer. Nothing contained in this paragraph 6 (d) is meant to limit the tenant's right to offer any evidence to the Hearing Officer that an offender is no longer occupying the tenant's apartment, including any spoken or written statement by the tenant or other persons.

- (e) If the tenant introduces character testimony or claims that his/her prior record as a tenant is unblemished, the Authority may at the hearing confront the tenant with adverse material in its possession, such as entries in the tenant folder, probation reports, other convictions, police records, etc., and cross-examine the tenant as to such information.
- (f) Before the close of the hearing, the tenant or his/her representative shall be permitted to make a general statement, in mitigation, as to why his/her tenancy should not be terminated. This will enable the Authority to consider matters which do not strictly pertain to the stated grounds for termination, but relate more properly to the family situation or other extenuating circumstances. The Authority may reply thereto for the record.

7. The proceedings shall be recorded by mechanical device. The tenant or the Authority may arrange in advance and at the expense of the party ordering the transcript, for a transcript of the hearing; provided, however, that in the event that the tenant orders the transcript he must deposit with the Authority an amount estimated by the Authority to cover the cost thereof prior to the making of the transcript. The other party may purchase a copy of such transcript. In the event judicial review is undertaken by the tenant he/she shall be furnished with a copy of the transcript without charge.

8. If the tenant fails to answer or appear at the hearing the Hearing Officer shall note the default upon the record and shall make his/her written decision on the record before him. Upon application of the tenant made within a reasonable time after his/her default in appearance, the Hearing Officer may, for a good cause shown, open such default and set a new hearing date.

THE DECISION OF THE HEARING OFFICER

9. The Hearing Officer shall prepare a written decision, which shall contain the reasons therefor, within a reasonable time after the hearing. The decision shall set forth with respect to each of the charges, the answers thereto, and all relevant issues raised at the hearing, his/her specific findings including findings as to whether the charges have been proven. Such decision shall be based solely upon the testimony, documents and physical evidence admitted into evidence at the hearing. If any charge is found to have been proven, the decision shall set forth the penalty to be imposed or the action to be taken. Where the tenant has introduced character testimony or has claimed that his/her prior record as a tenant is unblemished, the Hearing Officer may consider all the testimony and documents admitted into evidence at the hearing on this subject as well as the tenant's general statement, if any, in mitigation, and the Authority's reply thereto, in making his decision as to the penalty to be imposed. The Hearing Officer's decision together with the testimony, documents and physical evidence admitted into evidence at the hearing shall constitute the Record. A copy of the decision shall be sent to the tenant or his representative and the Authority. The Authority 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 Authority at Central Office and made available for inspection by tenants, their representatives, or Hearing Officers.

10. In the event that any charge is found to have been proven, the Hearing Officer may make any of the following dispositions:
 - (a) Termination of tenancy;
 - (b) Probation;

- (c) Eligible subject to permanent exclusion of one or more persons in the household;
- (d) Eligible;
- (e) Eligible with referral to Social Services.

11. The decision of the Hearing Officer shall be binding on the Authority, which shall take all action, or refrain from any action, necessary to carry out the decision, unless notice is mailed to the tenant or his/her representative within ten (10) days from the date of such decision that the decision is under review by the members of the Authority. In reviewing the decision, the members of the Authority shall consider and rely only upon the Record, and such review shall be limited to whether the decision of the Hearing Officer is contrary to applicable federal, state or local law, HUD regulations, requirements of the Annual Contributions Contracts between HUD and the Authority, or violates these Authority procedures by reason of procedural irregularity. The determination by the members shall be made within a reasonable time, and where such determination is less favorable to the tenant than that of the Hearing Officer, the Authority shall include therewith a written statement setting forth the specific bases, including the basis in law, regulations, contracts, or procedure, for making such determination. The Authority must promptly notify the tenant or his/her representative of the determination.

12. A decision by the Hearing Officer or a determination by the members of the Authority in favor of the Authority or which denies the relief requested by the tenant, in whole or in part, SHALL CONSTITUTE A WAIVER of the rights of the tenant to a trial *de novo* or judicial review in any judicial proceedings, except a judicial proceeding to review said decision or determination pursuant to Article 78 of the New York State Civil Practice Law and Rules.

13. Where the offender or offenders has (have) been removed from the household, it is mandatory that the disposition be: "eligible"; "probation"; or "eligible subject to permanent exclusion of one or more persons in the household". If there is more than one offender involved, the Hearing Officer may in such case make a disposition of both probation and permanent exclusion, each applicable to a different offender. Where a violation of probation or permanent exclusion is alleged, a hearing shall be accorded to the tenant on the alleged violation, according to the procedures set forth below.

PROBATION

14. Where any substantial charge of non-desirability has been proven and the disposition is "eligible subject to permanent exclusion of one or more persons in the household", the provisions of this paragraph and of Pars. 15 and 16 shall not be applicable. In all other cases, where any substantial charge of non-desirability has been proven, a tenant may be given probation for a specified term not to exceed a year when the conditions set forth in subparagraph (a) exist, and must be given probation for a specified term when the conditions set forth in subparagraph (b) exist:

- (a) There is reason to believe that the conduct or condition which led to the charge of non-desirability may not recur or may have been cured, or that the tenant is taking or is prepared to take steps to correct or cure such conduct or condition.
- (b) Absence of the offending member from the household (confinement in jail, away in the Armed Services, participation in residential drug program, etc.).

15. The Authority may set forth, in addition to the duration of probation, which shall be for not more than one year, other specific conditions to probation, such as the continued absence of an offending family member from the project grounds, the continued treatment of a drug addict, etc. Where a specific condition of probation is the continued absence of an offending family member, the family undertakes to do anything it reasonably can to keep the offending member away from the project premises. If the offending member returns to the premises during the period of probation, the burden is on the tenant family to show that they had done all they could to keep him from returning.

16. A violation of the general condition of probation shall consist of an act or omission on the part of a tenant or a member of his/her household occurring after an award of probation, which constitutes a ground for termination of tenancy under these procedures. Such act or omission may be one which, had it been the first infraction by the tenant, might have resulted in an award of probation, but may now be sufficient to warrant immediate termination of tenancy. Where an act which may constitute a violation of the general condition of probation has occurred, the provisions of Par. 14(b), above, are inapplicable.

VIOLATION OF PROBATION

17. In the event that in the opinion of the Manager during the term of probation the tenant has violated any condition of probation, he/she shall submit the tenant's folder together with a statement of the acts purportedly constituting the violation of probation to the Tenancy Administrator who shall forward the folder and statement to the Law Department if he/she finds there is a basis for a possible violation of probation. The Law Department shall prepare a summary of such alleged violations and notice of a hearing pursuant to Paragraph 4 above, and mail a copy thereof to the tenant or his representative.

18. A hearing to determine whether a violation of probation has occurred shall be conducted in accordance with paragraphs 5 through 10 above, except that only one adjournment shall be granted for good cause at the request of the tenant or his representative. Any further adjournment may be granted only on an affidavit setting forth a legal excuse. If the Hearing Officer finds there has been no violation of probation, he/she shall recommend that probation continue as prescribed. If the Hearing Officer finds there has been a violation of probation, he/she may make any of the following dispositions:

- (a) Immediate termination of tenancy;
- (b) Continuation of probation already prescribed; or
- (c) Probation for an additional prescribed period not to exceed a year on such additional terms or conditions as may be appropriate.

A copy of the Decision and Report on the alleged violation of probation shall be mailed to the tenant or his representative.

CHANGE OF CONDITIONS OF PROBATION

19. The tenant may apply for review, modification or termination of probation at any time a substantial change has occurred bearing on the need for probation, such as a definitive change in family composition. The tenant's application shall be in writing, addressed to the Tenancy Administrator, who shall submit such application to the Hearing Officer. The Hearing Officer may in his/her discretion:

- (a) Continue the probationary period unchanged;
- (b) Modify the duration or terms of probation; or
- (c) Remove the condition of probation from the tenant's status.

The tenant or his/her representative shall be informed in writing of the action on the application.

HOW PROBATION ENDS

- 20. (a) Where no proceeding on an alleged violation of probation is pending nor any violation of probation is known to the Manager, he/she shall prepare a report at least thirty (30) days prior to the end of the prescribed year of probation which certifies to such facts and recommends the removal of the condition of probation from the tenant's status. The Manager's report and recommendation shall be sent to the Tenancy Administrator, who shall note the removal of the condition of probation from the tenant's status. A copy of the Tenancy Administrator's memorandum shall be mailed to the tenant or his representative.
 - (b) If at any point during the year of probation an Authority employee other than the Manager discovers that there is evidence that a violation of probation may have occurred, the procedures set forth in Pars. 17 through 18, above, shall be followed.
 - (c) If the probationary period is concluded and the Manager shall have failed to make the report as provided in subparagraph (a) hereof, and no proceeding on an alleged violation of probation is pending, the condition of probation to the tenant's status shall be automatically removed at the conclusion of four months after the end of the year of probation and the tenant or his/her representative shall be so informed in writing by the Tenancy Administrator.
21. Anything to the contrary herein notwithstanding:
- (a) Any member of the Authority may at any time during the term of probation direct the Manager to submit a probationary report.
 - (b) The procedures in cases where a member or members of the Authority requests a probationary report shall be the same as if the Manager had submitted the report on his/her own initiative. If it appears that a violation of probation may have occurred during the term thereof, the procedures set forth in Pars. 17 through 18, above, shall be followed.

PERMANENT EXCLUSION

22. In the event that in the opinion of the Manager the tenant shall have violated the condition of permanent exclusion of one or more persons in the household which shall have been placed upon his eligibility, the procedures set forth in Pars. 17 through 18, above, shall be followed.

23. If the Hearing Officer decides that the condition of permanent exclusion of one or more persons in the household has been violated he/she may:

- (a) Make a final decision that the tenant is ineligible for continued occupancy forthwith, or
- (b) Continue the condition on such additional terms or conditions as may be appropriate.

The tenant or his/her representative shall immediately be informed in writing of such decision.

REMOVAL OF PERMANENT EXCLUSION

24. The tenant found eligible subject to permanent exclusion of one or more persons in the household may apply for removal of the condition at any time a substantial change has occurred bearing on the need for such condition for eligibility. The tenant's application shall be in writing, addressed to the Tenancy Administrator, who shall submit such application to the Hearing Officer. The Hearing Officer may in his/her discretion:

- (a) Continue the condition unchanged, or
- (b) Remove the condition of permanent exclusion of one or more persons in the household from the tenant's status of eligible.

The tenant or his/her representative shall be informed in writing of the Authority's action on the application.

EVICITION PROCEEDINGS

25. If a hearing has been held hereunder and the Hearing Officer has determined to terminate the tenancy, the Authority shall not commence an eviction action in a State or local court until it has served a Notice to Vacate, which shall not be served prior to the mailing or other delivery to the tenant of a copy of the Hearing Officer's decision or the Authority's determination. The Notice to Vacate must be in writing and specify that if the tenant fails to quit the premises by the date specified in the Notice, which date shall be not less than one calendar month from the date of the mailing or other delivery thereof, appropriate eviction action will be brought against the tenant and he/she may be required to pay court costs and attorney's fees.

**All matter incorporated by reference in Subdivision B of the Grievance Procedures for Federally-Aided Projects is set forth at length herein.*