

BROOKLINE HOUSING AUTHORITY (BHA)

90 Longwood Avenue
Brookline, MA 02446
Phone: (617) 277-2022
Fax: (617) 277-1462



LEASE ENFORCEMENT POLICY AND PROCEDURES

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I. POLICY OVERVIEW

The Brookline Housing Authority has adopted a policy of “Zero” tolerance of drug and crime related activities committed by BHA residents and their guests. BHA is committed to aggressive enforcement of its lease agreement. Recent federal regulations and initiatives provide that a HA must establish policies and procedures that allow for the termination of tenancy of any person the HA determines is illegally using and/or distributing a controlled substance (on or off of HA premises), or abuses alcohol to the extent that it interferes with the health, safety or right to peaceful enjoyment of the premises by other residents.

BHA as a landlord must prove that these activities are taking place on or off the premises and were committed by a tenant or any member of the tenant's household or guest. The standard of proof in evictions (civil) is "a preponderance of the evidence" which means that it is more likely than not that the tenant in question or any member of the tenant's household or guest engaged in these activities. This standard is less stringent than the criminal standard which is "beyond a reasonable doubt".

Federal “One Strike and You’re Out” regulations and Massachusetts General Law governing public housing authorities make it clear that a HA must be given discretion to evict an entire family for actions of a family member if eviction is in the best interest of other residents.

Federal regulations and Massachusetts General Law are also very clear on the rights of the resident under BHA's Grievance Procedures in proceedings involving termination of tenancy for any activity, not just a criminal activity, which threatens the health, safety or right to peaceful enjoyment of the premises by other tenants, employees of the HA or any person lawfully on the premises of BHA.

To ensure that lease enforcement efforts are accomplished in an efficient and expeditious manner, BHA requires staff to maintain accurate and complete documentation and evidence of any criminal, undesirable, drug related, and alcohol related activities that occurs on or off BHA property in which BHA residents or guest are involved.

II. TERMINATION OF TENANCY AND EVICTION

A. *FAST TRACK EVICTIONS*

State-Funded Public Housing

A 1995 amendment to M.G.L. c.121B §32 allows local housing authorities to attain “Fast

Track” evictions without a grievance hearing of any kind in state-funded public housing. In addition, residents evicted under this “Fast Track” procedure are no longer entitled to a stay of execution pending an appeal to the appropriate appellate court unless the court makes written findings that there is a reasonable likelihood that the resident will prevail. Residents will, however, be entitled to a Pre-Termination Conference prior to BHA commencing eviction actions.

The amendment legally entitles the BHA to proceed with “Fast Track” evictions if a resident, member of the household or guest has:

- unlawfully caused serious physical harm to another resident or employee of the housing authority, or any other person lawfully on the premises of the housing authority;
- threatened to cause serious physical harm to another resident or employee of the housing authority, or any other person lawfully on the premises of the housing authority;
- destroyed, vandalized, or stolen property of another resident or the housing authority or any person lawfully on the premises of the housing authority which thereby creates or maintains a serious threat to the health or safety of a resident or employee of the housing authority, or any other person lawfully on the premises of the housing authority;
- on or adjacent to housing authority property, possessed, carried, or illegally kept a weapon, or used an explosive or incendiary device, or has violated other specified gun and weapons control laws;
- on or adjacent to housing authority property, unlawfully possessed, sold, or possessed with the intent to distribute a controlled substance as defined in classes A, B, or C of M.G.L. c.94C §31.;
- engaged in other criminal conduct which seriously threatened or endangered the health or safety of another resident, employee of the housing authority, or any other person lawfully on the premises of the housing authority;
- a guest of a resident household member that engages in any such behavior listed above, where the resident knew or should have known that there was a reasonable possibility that the guest would engage in misconduct.

Federally-Funded Public Housing

Federal “One Strike and You’re Out” regulations also allow local housing authorities to attain “Fast Track” evictions without a grievance of any kind in federally-funded public housing. Residents, however, are entitled to a Pre-Termination Conference.

The regulations entitle the BHA to proceed with “Fast Track” evictions if a resident, member of the household or guest has engaged in:

- criminal activity which threatens the health, safety or right to peaceful enjoyment of the BHA’s public housing premises by BHA tenants or employees or agents of the BHA;
- drug related criminal activity on or near the premises, or any property of the BHA;
- alcohol related criminal activity;
- use of a controlled substance;
- unlawful possession or carrying a weapon on or near housing authority property;
- unlawfully possessing or using an explosive or incendiary device on or near housing authority property;
- use of premises for illegal or immoral purposes by a resident, member of a resident’s household or invited guest of a resident, including prostitution, assignation, lewdness, illegal gaming, illegal keeping, sale or manufacture of alcoholic beverages, or illegal keeping, sale or manufacture of a class A, B, C, D, or E controlled substance as defined in M.G.L.c. 94 C sec. 31.

B. IMMEDIATE VOIDING OF THE LEASE

Public housing authorities in the Commonwealth of Massachusetts have the right to immediately void the lease of a resident in both state-funded and federally-funded public housing, when the resident or guest of the resident engages in any conduct set forth in M.G.L. c.139 §19 as reasons to void the lease. This means the housing authority in certain cases is not required to serve a Notice to Quit on a resident in violation of his/her lease, and can void the lease immediately by stating the reasons for doing so in writing. Pre-Termination Conferences or hearings are also not required prior to serving a notice voiding the lease. The reasons BHA can void a resident’s lease include:

- Prostitution
- Assignation (operating a house of prostitution)
- Lewdness
- Illegal gambling
- Illegal keeping, manufacture, or sale of alcoholic beverages

- Illegal keeping, manufacture, or sale of controlled substances
- Illegal keeping of a weapon or incendiary device
- Commission of a crime involving the use or threatened use of force or violence against another resident, housing authority employee, or other person(s) lawfully on the premises of the housing authority's federal or state properties.

III. PROCEDURES

It is the goal of the BHA to ensure that there is sufficient documentation and evidence to support a case before BHA moves to evict a resident for criminal or drug-related criminal activity and severe alcohol abuse.

This procedure outlines the steps BHA staff must take to gather sufficient information (preponderance of the evidence) to convince the District Court that a resident of BHA should be evicted. It provides guidance to BHA staff for follow-up on all drug-related criminal activity, alcohol abuse and certain other serious criminal activity that interferes with the health, safety or right to peaceful enjoyment of the premises by other residents, identified by police or by other sources, including BHA management staff.

A. REPORTING OF ALLEGED CRIMINAL AND/OR DRUG-RELATED CRIMINAL ACTIVITY OR ALCOHOL ABUSE

BHA Staff, Residents, and Brookline Police Officers, in the best interest of maintaining a safe and secure living environment for BHA residents, will:

1. Direct all observations and reports of criminal and/or drug-related criminal activity on or off BHA property and evidence of alcohol abuse by a resident to the Property Manager for verification and follow-up.
2. Provide the Property Manager with as much information that is available regarding the incident, including: name and address of the offender; time, location or address of the incident; names and addresses of others involved; and specific details of the incident(s).
3. Property Manager will process the information accordingly:
 - a. Complete, in duplicate, an incident report. Record all information gathered and verify the identity and address of offender(s) as that of a BHA resident(s). Forward one copy to the Director of Management and place one copy in the resident's folder.
 - b. Upon receipt of any arrest data from the Police Department, forward to the

Director of Management.

B. FOLLOW-UP ACTIVITIES

After compiling all available information from all sources, the Property Manager shall take the following actions:

1. Determine if the offender is a BHA resident listed on the lease. If so, document as much evidence as available on the incident. Speak to witnesses, obtain police reports, clip newspaper articles, and take picture of damages, if any.
2. If the offender is not listed on a BHA lease, it is necessary to determine the address of the BHA unit where the activity allegedly occurred, be able to prove that the person reported is either an unauthorized resident, or was on the premises with the permission of the resident before proceeding.
3. If there was an arrest, work with the local police department to determine the exact facts of the case and gather additional information on the resident and/or household guest named:
 - a. Who was involved?
 - b. Was there an arrest or seizure on the property?
 - c. Where and when did the arrest or seizure take place?
 - d. What was the person charged with?
 - e. What is the age and previous criminal history of the person involved, if available?
 - f. Has the person been convicted or pleaded guilty?
 - g. Was the person engaged in a crime of violence, theft, or in possession of a weapon at the time?
 - h. Can it be proven that the head of household knew about the criminal and/or drug-related criminal activity taking place on or near the premises?
 - i. Is this person currently under a BHA "No Trespass" order?
4. In consultation with the Director of Management, determine which of the following processes is appropriate based on the information compiled and the history of each resident involved:

- a. Send Warning Letter
 - b. Issue Pre-Termination Conference Notice
 - c. Initiate the “Fast Track” eviction or lease voiding process
5. If the incident is a complaint that is unsubstantiated by police reports, but there is reason to believe criminal activity may have occurred, a warning letter may be appropriate. Place a copy of the letter in the resident’s file and send a copy to the Director of Management.
6. If the incident is a recurring complaint and the resident has a history of similar incidents that have been documented, but no arrests made, make a request to the BHA attorney to send the resident a Pre-Termination Conference Notice. M.G.L. c.139 §19 eliminates the requirement for a Pre-Termination Conference in certain for cause cases. (See Section II of this policy.)
 - a. Include with the request all of the facts related to the incident, any documents available, a detail of prior incidents, and any other pertinent information on the resident’s history that may be helpful to the attorney.
 - b. The pre-termination notice should clearly state details of the alleged lease violation including the applicable section and paragraph of the lease and any applicable Massachusetts General Law statute (example: On January 5, 1998, you and guests of your household were observed drinking what appeared to be alcoholic beverages on your front porch and subsequently engaged in a fight. You are in violation Section VI. Tenant Obligations, paragraph 14 and M.G.L. c.121B §32).
 - c. Schedule a date and time for the conference that is convenient to all parties.
 - d. Place a copy of the notice in the resident’s file and send a copy to the Director of Management.
 - e. Residents are allowed to reschedule the Pre-Termination Conference only one time and must give 24 hours notice of intent to reschedule. If the resident fails to attend the conference or does not call to request another meeting within 24 hours, notify the BHA legal counsel who will initiate a 30-day notice to quit.

7. After consulting with the Director of Management, if the recommended course of action is to take steps to fast track or void the lease, initiate this process.

C. PRE-TERMINATION CONFERENCE

The Property Manager and the Director of Management should attend the Pre-Termination Conference. It is the responsibility of the Director of Management and the Property Manager to:

1. Explain the steps of the legal eviction process to the resident and to review the alleged lease violations.
2. Explain the possible outcomes of the conference, ranging from an informal agreement to continuation of the eviction case to trial.
3. Take detailed notes of the proceedings.
4. Not break any confidences when warning the resident. If a neighbor's complaint was the source of the information, simply say that the alleged problem has come to the attention of BHA and do not name any informants.
5. Be as specific as possible about what behavior is allegedly going on so the resident clearly understands it. If relevant, describe what actions the resident can take to avoid possible eviction (ex: stop the illegal behavior from happening or move the person involved in the criminal activity out of the household).

D. FAST TRACK EVICTIONS

The Property Manager, after consulting with the Director of Management will consider initiating the "Fast Track" eviction process if the lease violation is for any reason or reasons outlined in the federal "One Strike and You're Out" rule or in M.G.L. c.121B §32 that addresses this type of eviction. Residents evicted pursuant to this statute and/or the federal "One Strike and You're Out" rule are not entitled to a BHA grievance hearing or, in state-funded public housing, to a stay of execution (of the eviction) pending an appeal to the appropriate appellate court unless the court makes written findings that there is a reasonable likelihood that the resident will prevail. Residents are, however, entitled to a Pre-Termination Conference. "Fast Track" evictions will proceed as follows:

1. The Property Manager will follow all the reporting, investigative and follow-up procedures as outlined in Section III. Procedures. A., B., and C.
2. Immediately after the Pre-Termination Conference, the Property Manager

will assemble additional documents the attorney will require to prepare the 30 day Notice to Quit. Copies of appropriate documents will be forwarded to the attorney without delay.

3. The attorney will immediately prepare a Notice to Quit that will be served on the resident by a local Constable. A copy will be placed in the resident's file and a copy will be forwarded to the Director of Management.
4. Once the Notice to Quit has expired, the attorney will file a Summary Process summons and complaint with the Brookline District Court to commence legal action. The summons, requiring the tenant to make an appearance in Court, will be hand delivered to the resident by a Constable.
5. The Property Manager will attend the Court hearing and have the resident's file containing all historical and evidentiary documentation of the resident's lease violations and/or undesirable conduct.
6. If the Court rules in favor of BHA, it has ten (10) days to enter a judgement against the resident and issue an execution order to have the Constable physically evict the resident from the property.

E. VOIDING A LEASE

The Property Manager, after consulting with the Director of Management, will consider initiating the lease voiding procedure in either state-funded or federally-funded public housing if the lease violation is any reason or reasons to void a lease set forth in M.G.L. c. 139 Sec. 19. Residents evicted pursuant to this procedure are not entitled to a BHA grievance hearing, a Pre-Termination Conference, or to a stay of execution (of the eviction) pending an appeal to the Superior Court. A resident's lease may be voided by the following process:

1. The Property Manager will follow all the reporting, investigative and follow-up procedures outlined in Section III. Procedures. A. and B., omitting the Pre-Termination Conference.
2. Without delay, following the reporting of the incident(s) and after conferring with the Director of Management, the Property Manager will assemble the documentation the attorney will need to generate a notice voiding the resident's lease. The Property Manager should consult with the BHA attorney to carefully identify the grounds for voiding the lease and to ensure that the lease violation fits the reasons set forth in M.G.L. c.139 §19 as the basis for voiding a lease.
3. The BHA attorney will prepare a letter to the Resident stating that the Housing Authority is voiding the lease immediately, specifying the reason and factual and legal basis for voiding the lease. The letter will be delivered by the local Constable in the same manner as a Notice to Quit. A copy of the letter will be forwarded to both the Property Manager and the Director of Management.

4. The BHA attorney will immediately commence court action seeking possession of the unit. This can be done through either a Summary Process summons and complaint or by seeking a court injunction forcing the resident out of the property immediately. A court injunction should only be used in the most egregious and dangerous of cases.
5. The Property Manager will attend the Court hearing and have the resident's file containing all historical and evidentiary documentation of the resident's lease violations and/or undesirable conduct.
6. If the Court rules in favor of BHA, it has ten (10) days to enter a judgement against the resident and issue an execution order to have the Constable physically evict the resident from the property.

IV. APPEAL

A resident may file a Court appeal of a case brought on any of the grounds for eviction discussed in the policy and procedure manual. However, in the case of a fast track eviction (state-funded public housing only) or a voiding of a lease, the resident will not be entitled to a stay of execution. This means that in these cases, the resident can be physically evicted pending appeal unless the court finds a reasonable likelihood of success on the appeal. Such findings by a judge are rare. If the resident wins the appeal, the Housing Authority must re-house the resident.