

Chapter 12

RENTAL AGREEMENT TERMINATIONS

[24 CFR 966.4]

INTRODUCTION

The PHA may terminate tenancy for a family because of the family's action or failure to act in accordance with HUD regulations [24 CFR 966.4 (1)(2)], and the terms of the rental agreement. This Chapter describes the PHA's policies for notification of rental agreement termination and provisions of the rental agreement.

A. TERMINATION BY TENANT

The tenant may terminate the rental agreement by providing the PHA with a written twenty-eight (28) day advance notice as defined in the rental agreement.

B. TERMINATION BY PHA

Termination of tenancy will be in accordance with the PHA's most current rental agreement.

The rental agreement may be terminated by the PHA at any time by giving written notice for serious or repeated violation of material terms of the rental agreement, including, but not limited to the following:

- Nonpayment of rent, repeated chronic late payment of rent, failure to pay rent in full when due, and/or nonpayment of other charges (i.e. excess utilities, maintenance and towing charges) due under the rental agreement, or;
- Failure to obtain prior written consent of Management, to allow members of the household to engage in legal profit making activities in the dwelling unit, where Management determines that such activities are incidental to primary use of the unit for residence by members of the household;
- Failure to report changes in family income, assets, and employment and household composition as required by Management to determine Tenant's rental rate and eligibility for continued occupancy; changes shall be reported within ten (10) business days or
 - (1) Discovery after admission of facts that made the tenant ineligible or
 - (2) Discovery of material false information, information withheld, willful misstatements, or fraud by the Tenant at the time of admission, reexamination, interim, or at any other time;
 - (3) Tenant is ineligible for continued occupancy;

- Permitting any person to occupy the dwelling unit other than persons listed on the most current household composition form(s), except that with prior written consent of Management, a foster child/adult or a live-in aide may reside in the unit;
- Failure to observe all applicable laws, rules, regulations, and ordinances of governmental authorities that pertain to and establish standards for residential occupants;
- Failure to abide by the Project Rules and all applicable rules, regulations, and supplemental agreements that shall be available at the Project Office and incorporated by reference in the Lease;
- Failure to pay for repair of all damages to the dwelling unit or to any appliances or equipment furnished by Management, in excess of ordinary wear and tear, and for any repairs to the Project buildings, facilities, or common areas, required because of the wrongful act or negligence of Tenant, Tenant's household, guests, or visitors;
- Committing or suffering any damage to the dwelling unit, any act that shall cause increase in the premiums for fire and other casualty insurance on the building, or any noise or nuisance to the disturbance of other Tenants of the Project;
- Making any alterations or additions to the dwelling unit, including the installation of any additional locks, bolts, screws or other fixtures, or any decorations therein which shall damage or deface the doors, windows, walls, or floors without obtaining Management's prior written consent;
- Assigning the rental agreement or subletting the dwelling unit;
- Failure to peaceably surrender the dwelling unit to Management in good order and condition, except for ordinary wear and tear, and return all keys thereto upon the termination of the tenancy for any cause;
- Failure to keep the dwelling unit and such other areas as may be assigned to Tenant for Tenant's exclusive use in a clean, sanitary and safe condition;
- Failure to dispose of all ashes, garbage, rubbish and other waste from the premises in a sanitary and safe manner;
- Failure to use only in a reasonable manner all electrical, plumbing, sanitary, ventilating, air conditioning and other facilities and appurtenances including

elevators;

- Failure to refrain from and cause Tenant household members and guests to refrain from destroying, defacing, damaging or removing any part of the premises or Project;
- Failure to agree to transfer to an appropriate size dwelling unit based on family composition, upon notice by Management that such a dwelling unit is available;
- Refusal to transfer or relocate for reasons including but not limited to, health & safety, repair, abatement, construction or renovation of the unit;
- Keeping or permitting to be kept any animal, as a pet or otherwise, in or about the dwelling unit, except as provided by law and, in all other housing, in accordance with the Pet Policy which is incorporated by reference in the rental agreement;
- Failure to refrain from storing any unlicensed, inoperable or abandoned vehicle on the Project premises; and if the vehicle is required to be towed by Management, upon billing, Tenant shall pay for any charges incurred by Management;
- Failure to comply with all obligations imposed upon Tenants by applicable provisions of building and housing requirements of applicable building codes, housing codes, health codes, materially affecting health and safety;
- Failure to comply with all HUD regulations pertaining to the requirement that all adult household members, unless exempt, participate for at least eight hours per month in community service or an economic self-sufficiency program; non-compliance will result in denial of rental agreement renewal; and
- Failure to be physically present and residing in the dwelling unit;
- Failure to accept Management's offer of a revision to the existing rental agreement. Such revision must be on a form adopted by the agency in accordance with regulations. Management must give Tenant written notice of the offer of revision at least sixty (60) calendar days before it is scheduled to take effect. The offer must specify a reasonable time limit within that period for acceptance by the Tenant;
- Failure to conduct himself and cause other persons who are on the premises with Tenant consent to conduct themselves in a manner which will not disturb Tenant neighbors' peaceful enjoyment of their accommodations and will be conducive to maintaining the Project in a decent, safe and sanitary condition, and not loiter or drink alcoholic beverages in the project's common areas as defined in the Project Rules;

- Failure to assure that Tenant, any member of the household, a guest or another person under Tenant control, shall not engage in:
 - (1) Any criminal activity or alcohol abuse that threatens the health, safety or right to peaceful enjoyment of Management's public housing premises by other public housing residents or neighboring residents or employees of Management.
 - (1)(a) "Alcohol abuse" means a tenant or any member of the tenant's household has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, or furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers. The PHA will consider the alcohol abuse to be a *pattern* if there is more than one incident during the previous one (1) month.
 - (2) The illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug; or any drug-related criminal activity on or off such premises.
 - (3) Any illegal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage;

Management will immediately seek termination of the rental agreement if it determines that any member of the household has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing. Any drug-related criminal activity in violation of this section shall be cause for termination of tenancy and for eviction from the unit. Management has the discretion to consider all the circumstances and effects of the violation.

A PHA may evict for criminal activity by administrative action if the PHA determines that the covered person has engaged in criminal activity, regardless of whether the person has been arrested or convicted of criminal activity and without satisfying the standard of proof used for a criminal conviction.

Note: For a criminal conviction the standard of proof is "beyond a reasonable doubt", while for civil cases, such as evictions, the standard of proof is based on "the preponderance of the evidence". Note that a PHA cannot simply allege that criminal activity has occurred, however. Some sort of evidence will be required. For example, if the PHA claims that drug-related criminal activity has occurred, proof that illegal drugs

were involved will be needed (i.e., testimony of a police officer).

In evaluating evidence of negative behavior, the PHA will give fair consideration to the seriousness of the activity with respect to how it would affect other residents, and/or likelihood of favorable conduct in the future which could be supported by evidence of rehabilitation.

The PHA may waive the requirement regarding drug-related criminal activity if:

- The person demonstrates successful completion of a credible rehabilitation program approved by the PHA, or
- The individual involved in drug-related criminal activity is no longer in the household and/or has been removed as a household member because the person is incarcerated.

The PHA may permit continued occupancy provided the family accepts imposed conditions that the involved family member(s) does not reside in the unit. The PHA may consider evidence that the person is no longer in the household such as a divorce decree/incarceration/death/copy of a new lease for the person including the owner's telephone number and address or other substantiating evidence.

C. NOTIFICATION REQUIREMENTS

Notice of Violation of Rental Agreement

In case of any default by the Tenant in the payment of rental or the observance and performance of any covenant under the Rental Agreement, the PHA shall notify the Tenant of the default in writing and shall specify the time within which the default and noncompliance must be remedied and corrected. If the Tenant fails to remedy and correct the default and noncompliance within the time specified in the notice, the PHA may terminate the rental agreement; however, the PHA shall not terminate or refuse to renew the rental agreement other than for serious or repeated violation of material terms of the agreement such as failure to make payments due under the rental agreement or to fulfill Tenant's obligations set forth under the rental agreement or for other good cause.

After the Notice of Violation is sent, if the Manager extends the time to cure, the extension must be justified by documentation or verification in the tenants file.

Tenants shall be notified of specified time to remedy the violation as follows:

<u>TYPE OF VIOLATION</u>	<u>TIME TO REMEDY</u>
Any member of the household has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing	0 Days
Any drug related criminal activity on or off the project premises	0 Days
Any member of the household has been convicted of a felony	0 Days
Where tenant has received notice from the United States Department of Housing and Urban Development that the tenant is no longer eligible to remain in the unit	0 Days
A history of chronic violations of any material term of the Rental Agreement (Chronic is defined as 3 notices of violation of the same provision of the Rental Agreement issued to the tenant within a 12 month period.)	0 Days
A history of chronic rent delinquency. (Chronic is defined as 3 notices of violation of the same provision of the rental agreement issued to the tenant within a 12 month period.)	0 Days
Any violation of any provision of the Rental Agreement that potentially threatens the health or safety of other residents or the Corporation's employees or their representatives (ex. Fire hazards, slip and falls, unsanitary conditions, vicious animals, etc.)	24 Hours
Non payment or failure to pay rent when due	14 Days
Any Other Violation	30 days in all other cases unless management can justify the deviation from the 30 days

D. NOTICE OF PROPOSED TERMINATION OF RENTAL AGREEMENT

The PHA must give written notice of proposed rental agreement termination. The notice to the tenant shall state specific grounds for termination, and shall inform the tenant of the tenant's right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to Sec. 966.4 (m)) to examine PHA documents directly relevant to the termination or eviction. The notice shall also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedure. (See Chapter 13, Complaints, Grievances and Hearings.)

Notices of rental agreement termination shall be in writing and delivered to the tenant or adult member of the household or sent by first class mail properly addressed to the tenant. If the tenant is visually impaired, all notices must be in an accessible format, or put in accessible format if requested.

If the PHA proposes termination of the rental agreement, written notice must be given. (PHA may terminate the rental agreement as follows):

- The PHA will immediately proceed with termination of tenancy of persons convicted of manufacturing or producing methamphetamine on the premises of the assisted housing project in violation of any Federal or State law. "Premises" is defined as the building or complex in which the dwelling unit is located, including common areas and grounds.
- A reasonable time, defined in the lease as not to exceed thirty (30) days considering the seriousness of the situation: (1) If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; (2) If any member of the household has engaged in any drug-related or violent criminal activity; or (3) If any member of the household has been convicted of a felony
- 14 calendar days in the case of failure to pay rent;
- Thirty days in all other cases.

Any violation under section 201G-52, HRS, shall constitute cause for the project managers within each county to initiate eviction proceedings.

E. EVICTION BASED ON DELINQUENT RENT ACCOUNTS

Before the management unit (MU) can send the eviction referral, the MU must meet the following statutory requirements.

1. **WRITTEN NOTICE** – SB331 (Act 227) requires that written notice be sent to Tenant no later than 45 days from the date of delinquency, (NOTE: the RENT COLLECTION POLICY REQUIRES MANAGEMENT TO SEND IT ON OR ABOUT THE 15TH DAY OF THE MONTH). This written notice should contain the following information and attachments:

1. Continued delinquency shall result in tenant's eviction
2. Tenant has a right to apply for interim adjustment in rent
3. Explain the steps of the grievance and eviction processes and how the processes protect the tenant
4. Sample letter for demanding a grievance hearing
5. Set forth location, date, and time of meeting which SHALL NOT BE SCHEDULED EARLIER THAN 14 DAYS FROM DATE OF THE WRITTEN NOTICE at which tenant may meet with corporation to discuss the delinquency in rent
6. Tenant shall either attend meeting or contact the corporation before the meeting to reschedule

2. **MEETING**

1. MU to discuss cause of Tenant's delinquency and may offer suggestions that are appropriate to address the cause(s) of tenant's delinquency
2. Consider whether a reasonable payment plan is appropriate for the tenant's situation – if appropriate. If a repayment plan offered to tenant, it cannot exceed **SIX (6) months** pursuant to Hawaii Administrative Rules (HAR) section 17-2020 (Eviction Rules). The repayment period should NOT extend beyond six months.
3. Inform tenant and explain that continued delinquency shall result in their eviction
4. Inform tenant and explain their right to apply for an interim adjustment in rent
5. Inform tenant and explain the grievance and eviction process and how the processes protect them

3. **CHECKLIST** – the corporation shall develop a checklist outlining the issues covered at the Meeting (i.e. cause of delinquency, suggestions from management, consideration of a

reasonable payment plan, consequence of continued delinquency, interim adjustment, grievance and eviction process)

1. Management AND tenant shall complete, sign and date the checklist to memorialize the meeting

If tenant fails to attend or reschedule the Meeting	If tenant attends the Meeting
<ol style="list-style-type: none">1. MU sends tenant a SECOND WRITTEN NOTICE informing tenant that MU shall proceed to terminate the tenancy because of the outstanding rent delinquency and tenant's failure to respond to the written notice scheduling the Meeting2. Tenant has 30 days from second written notice to request a grievance hearing3. If tenant fails to request a grievance hearing within 30 days, MU has a right to proceed with the eviction hearing pursuant to section 201G-53, HRS	<ol style="list-style-type: none">1. MU decides what action is appropriate for tenant's case and NOTIFIES TENANT OF MU'S DECISION IN WRITING2. If decision is to terminate the tenancy the written notice shall inform tenant that<ol style="list-style-type: none">a. Tenant has 30 days from receipt of the notice to request a grievance hearingb. If tenant fails to request a grievance hearing within 30 days, the corporation has the right to proceed with eviction pursuant to section 201G-53, HRS

F. EVICTON BASED ON NON-RENT VIOLATION

1. For non-rent violations received as a complaint, MU shall follow the HCDCH complaint procedure.
2. For non-rent violations observed by MU staff, MU shall conduct their investigation.
3. If the violation is not resolved after the investigation, the MU shall send the Tenant a written notice of the violation which shall include the following info:

- Specify the Rental Agreement provision violated
 - Detailed description of the violation
 - Time that Tenant should cure the violation, if applicable
 - Notification that continued violation or failure to correct violation by the deadline may result in termination of the rental agreement
4. If the non-rent violation is not resolved or corrected, or calls for immediate termination of the Rental Agreement, MU shall send Tenant a Written Notice of Violation and Proposed Termination of the Rental Agreement which shall contain the following information and attachments:
- Specify the Violation
 - Identify the Rental Agreement provision violated
 - Explain steps of the grievance procedure and eviction process
 - Attach sample letter for requesting grievance hearing
 - Inform Tenant that MU shall proceed to terminate tenancy because violation continuing or not corrected or because violation calls for immediate termination of the Rental Agreement
 - Tenant has 30 days to initiate Grievance Procedure
 - If Tenant fails to request Grievance Procedure within 30 days, MU has right to proceed to eviction hearing pursuant to 201G-53, HRS

G. REFERRAL TO THE EVICTION BOARD

Via interoffice memorandum (IOM)

1. Violation of SPECIFIC Provision of the Rental Agreement – should be consistent with all the written notices to tenant informing them of the violation
2. Identify the Tenant, Address and Household
3. Provide some background of Tenant
4. Cite the rental agreement provisions
5. Cite SPECIFIC info supporting your allegations that tenant violated the RA (i.e. on March 21, 2004, management received a complaint from another resident that you were pulling fire alarms off the wall). The more specific your information, the better for your case.
6. Identify the number of times with specific dates that management sent notices to tenant regarding the violation and attach the notices to the IOM in its entirety and in chronological order.
7. Identify the number of meetings or telephone contacts with specific dates you've had with tenant regarding the violation and attach your notes of the contacts to the IOM in chronological order.

8. Recommendation to the Board
9. Manager or Deputy Manager's signature on the IOM – the Originator of the IOM should be a Manager or Deputy Manager. You will be testifying at the hearing.

H. ORDER OF DOCUMENTS IN REFERRAL

RENT CASES:

1. IOM
2. Updated Summary of Rent Payment Sheet - Prepare a summary sheet for the board to reference. (SEE EXAMPLE) Information should include month, charges, payments/credits, balance, and notes.
3. All relevant correspondence with oldest dated letter on the top and most recent dated letter on the bottom.
4. RA (include Grievance Procedure, project rules, pet policy and any other documents referenced on the Rental Agreement)
5. Form 4057

NON-RENT CASES:

1. IOM
2. Correspondence in chronological order.
3. Other supporting notes, incident reports, etc., in chronological order.
4. RA
5. Form 4057

I. SERVICE OF DOCUMENTS (Notice of Hearing, Findings, Writs)

Service of the documents is set forth in the HAR section 17-2020 - they are very specific and we must follow them or service is not valid – which means the case cannot be heard and we'd have to reschedule the hearing to arrange for valid service.

The Notice of Hearing must be served on the Tenant AT LEAST FIVE days before the hearing. For neighbor islands, HRO sends the Notices out at least 3 weeks before the hearing in case a posting has to be requested. MU should monitor the service with the process server.

Posting must be approved in writing by the Eviction board before you can post. HAR also requires the document to be mailed via first class mail in addition to posting, which HRO completes.

J. WRIT ENFORCEMENT

Manager or Deputy Manager should ALWAYS be present at the enforcement to answer questions about the issues at the hearing, the rights on appeal or arrangements for storage or retrieval of their belongings. Maintenance staff may be present to assist with changing locks and inventory, but do not send them alone.

When the PHA evicts an individual or family for criminal activity, the PHA shall notify the Post Office that the individual or family is no longer residing in the unit.

K. RECORD KEEPING

A written record of every termination and/or eviction shall be maintained by the PHA at the development where the family was residing, and shall contain the following information:

- Name of resident, Social Security number, race and ethnicity and identification of unit occupied;
- Date of the Notice of Lease Termination and any other notices required by State or local law; these notices may be on the same form and will run concurrently;
- Specific reason(s) for the Notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the Notices described in detail (other than the Criminal History Report);
- Date and method of notifying the resident;
- Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions.

Records for persons whose leases were terminated for any reason will be kept by the PHA indefinitely.