

housing answers

for residents
of public housing

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termination hearings

Center for Benefits and Services

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This guide is for public housing residents facing termination of tenancy proceedings. Know what to expect and be prepared! It will also help you understand your options before you get to the hearing. This guide will help you defend yourself at the hearing.

This guide is not about Housing Court. If you get Housing Court papers, answer them in Housing Court right away. For help finding a lawyer to help with a Housing Court case, or for advice regarding a Housing Court issue, call the City-Wide Task Force on Housing Court's Hotline at 212-962-4795.

What is a New York City Housing Authority (NYCHA) termination hearing?

NYCHA uses a Termination Hearing to try to evict a tenant for any reason other than non-payment of rent, cases resulting from drug raids in the apartment in question, or cases in which NYCHA claims that there are people living in the apartment who are not tenants. In those cases, NYCHA will go directly to court.

A NYCHA termination hearing is an informal trial. NYCHA presents its evidence against the tenant, the tenant presents his or her evidence in defense, and the Hearing Officer listens to the evidence and later makes a decision. The Hearing Officer works for NYCHA, but is supposed to be impartial. This means the hearing officer should listen to both sides, and make a fair decision after considering the evidence. The hearing will be tape recorded. These hearings take place at NYCHA's main office (250 Broadway) and not in Housing Court.

Even though a termination hearing is less formal than a trial, it can have very serious consequences. **The hearing is the only chance you have to show why you should not be evicted.** If you lose your hearing, you will probably be evicted.

How does NYCHA inform me that they want to terminate my tenancy (evict me)?

First, you will receive a letter from your project manager asking you to meet to discuss the possible termination of your tenancy. At the meeting, your manager will tell you why NYCHA wants to evict you and will ask you to explain yourself. **Remember**, NYCHA can use whatever you say during this meeting against you at a termination hearing. If the manager still wants to terminate your tenancy after the meeting, s/he will send you another letter informing you that the entire record of your tenancy is being forwarded to the Office of the Tenancy Administrator and that you will be notified of the date and time of the hearing. A few weeks later, you will receive a letter called a "Notice of Hearing".

What is in a Notice of Hearing?

The Notice of Hearing tells you that NYCHA thinks you should be evicted, and has scheduled a hearing. NYCHA encloses a "**Specification of Charges**" with the "Notice of Hearing." **DO NOT IGNORE** a letter from NYCHA telling you to appear at a hearing at 250 Broadway in Manhattan!!!

The Notice of Hearing will tell you the hearing date and time. The “Specification of Charges” will tell you exactly what NYCHA thinks you did wrong. The Specification of Charges gives the details about each charge or claim against you. NYCHA’s Legal Department sends you the Notice of Hearing.

What does the “Specification of Charges” mean?

NYCHA must tell you specifically why they are trying to evict you. They must describe the conduct that they object to and why they can evict you for that conduct. Understanding the charges will help you prepare your defense. Here are the seven kinds of charges that NYCHA may bring, and what they mean:

1. NON-DESIRABILITY

Any conduct which is a danger to neighbors or employees, damages NYCHA property, or constitutes a sex or morals offense or a common law nuisance. Please understand that NYCHA defines this charge very broadly. They essentially consider a tenant who engages in, or allows any guests or occupants of his apartment to engage in, any sort of conduct which bothers the staff or neighbors, or which is dangerous, as “non-desirable.”

2. BREACH OF RULES AND REGULATIONS

Breaking any NYCHA rule, regulation or resolution. The tenant has the chance to correct the problem, even if s/he is found to have broken the rules or regulations. The rules are listed in the lease on pages 5-7, and include the requirement that all members of the household be authorized to be there by NYCHA.

3. CHRONIC BREACH OF RULES AND REGULATIONS

Repeatedly violating NYCHA’s rules and regulations. The tenant does not get a chance to correct the problem, but may still be given probation after a hearing.

4. CHRONIC DELINQUENCY IN PAYMENT OF RENT (CRD)

Late payment of rent. NYCHA defines this charge as the failure to pay the rent within the month due at least three times within a twelve month period. NYCHA often uses this charge even if the tenant owes no rent at the time NYCHA sends the “Notice of Hearing”.

5. NON-VERIFIABLE INCOME (NVI)

Failing or refusing to give NYCHA proof of the household’s income.

6. MISREPRESENTATION

Giving NYCHA false information or concealing an important fact relating to the tenant’s eligibility for housing, or the determination of the amount of rent. The misstatement or concealment must be purposeful and it must be relevant.

EXAMPLE 1 (not purposeful, and not relevant): The tenant forgot to report her 17 year old daughter’s part time employment income. This failure to report does not constitute misrepresentation or concealment no matter how much the daughter earned because the employment income of minors is not counted when calculating household income. Therefore the failure to report that income does not affect the rent level.

EXAMPLE 2 (purposeful, but not relevant): The tenant deliberately did not report her grown daughter’s income, but the daughter is not a permanent member of the household. She is only a temporary member whose income is not included in family income.

EXAMPLE 3 (purposeful and relevant): The tenant failed to report her adult daughter’s income over a two year period, and the household does not pay the maximum rent. This is misrepresentation because the rent would have been raised if all household members’ income had been reported.

7. ASSIGNMENT OR TRANSFER OF POSSESSION

Allowing other people to move in and live in the apartment without NYCHA’s permission, when the tenant who signed the lease no longer lives in the apartment.

What do I do when I get a Notice of Hearing?

1. Start preparing to defend yourself. See the section below, “How do I get ready for the hearing?” for more information.
2. Go to 250 Broadway on the hearing date. **DO NOT MISS YOUR HEARING DATE! IF YOU MISS IT, YOU AUTOMATICALLY LOSE YOUR HEARING.** See the section below, “What happens if I miss my hearing date?” for more information.
3. If you cannot go to the hearing on the scheduled date, call the NYCHA number on the Notice of Hearing, **before the hearing date** and ask to have the hearing rescheduled. Be sure to talk to someone. Do not just leave a message on the answering machine. If NYCHA does not agree or does not respond then you **must** appear at the hearing on the scheduled date. See the section below, “Can I change my hearing date?” for more information.

Should I find a lawyer to represent me at the hearing?

Yes, you should try to find a lawyer. It is better to have a lawyer or other advocate who is experienced with NYCHA termination hearings than to go by yourself. You can find a lawyer by contacting The Legal Aid Society at 212-577-3300, or Legal Services for New York City at 212-431-7200. You can also find a lawyer by going to www.LawHelp.org on the internet.

You may not be able to get a lawyer to represent you. There are not enough lawyers for all of the low-income people who need them. This guide will help you represent yourself if necessary.

How do I get ready for the hearing?

First, call the NYCHA representative whose phone number is on the Notice of Hearing and make an appointment to examine your tenant file. Read and copy the documents that relate to the charges against you such as the interview records and any police reports in the file. Those will give you more information about what NYCHA claims you did that was against the rules. You have the right to make copies of anything from your file. The cost for copies is \$0.25 per page, so bring money with you.

You have the right to see any documents that NYCHA plans to use at the hearing. If you don't see a document in your file, but they later use it at your hearing, you should object.

Get people who know you or the person charged with doing something wrong, to write a letter for you. Their letters can help show you are a good tenant and should not be evicted. All letters should be dated and signed. They should also be notarized and written on company letterhead. You may want to get letters from your employer, school or teacher, social worker, minister, probation officer, and/or other tenants. The type of letter that you will need depends on the charges against you. For example, if your son is charged with non-desirability, but he has been working for eight months, ask his employer to write a letter about how long he has been working and what a good employee he is.

Gather any documents you may need to help support your case. For example, if NYCHA is accusing you of allowing someone who is not on your lease to live in your apartment get copies of documents tying that person to another address (such as a lease, utility or cable bill, or letter from his landlord).

What happens when I go to 250 Broadway?

Usually the first time you go to 250 Broadway, you will meet with a NYCHA representative who may be a lawyer. This person is not the Hearing Officer, but a Housing Authority employee whose job is to resolve the case most favorably to NYCHA! The representative can offer to settle the case. But s/he cannot decide to terminate your tenancy or evict you. That is up to the Hearing Officer. The representative will probably ask you to sign a **stipulation**.

What is a stipulation?

A stipulation is a legal agreement between you and NYCHA which resolves the case. **READ IT CAREFULLY before you decide whether to sign it.**

Here are terms you may see in a stipulation:

1. PROBATION FOR THREE TO FIVE YEARS.

This means that if you break any NYCHA rules during the time that you are on probation, you will be charged with a violation of the rule **and** violation of probation. Also, while you are on probation you will not be able to add family members to your lease.

2. PERMANENT EXCLUSION WITH NO VISITATION.

The family member accused of bad conduct or "nondesirability" can **never** come back to the apartment or to any other NYCHA apartment in which you may subsequently live, for **any** reason, including visiting on holidays, birthdays or because you or your excluded family member is sick.

3. INSPECTION.

NYCHA inspectors may come to your apartment and make surprise visits. The visits can be any day of the year (including Christmas Eve) and at any time between 9:00 a.m. and 7:00 p.m. If you are home and you do not allow the inspectors in, you will be charged with a violation of probation.

CAUTION: You may be evicted if you violate a stipulation, but NYCHA will bring you back to 250 Broadway for a new hearing before evicting you. At that hearing you can argue that you did not violate the stipulation and can dispute the charges against you.

Should I sign a stipulation?

Maybe. Signing a stipulation is a safer choice. It means you can't be evicted now. However, stipulations usually have terms that are not good for tenants. For example, a stipulation may give five years of probation, but the most probation time a Hearing Officer can give is one year. The risk of going to a hearing is that your tenancy could be terminated. Only you can decide if you are willing to take the risk. If possible consult with a housing advocate before making this decision.

The NYCHA attorney may tell you that NYCHA is not trying to evict you, but is only trying to make sure that the non-desirable person does not come back. The attorney may also tell you that if you do not sign the stipulation, NYCHA will ask the Hearing Officer to evict you. But you may win the hearing. For example, if you have good proof that the offending family member does not live with you, then NYCHA will not be able to evict you. If you are not sure whether to sign the stipulation, you should ask the NYCHA attorney to schedule another hearing date and let you take a copy of the stipulation home to think about it.

What happens if I do not sign a stipulation?

If you do not sign a stipulation, the termination hearing will take place. As explained above, the hearing is like an informal trial which will be conducted in a hearing room and will be tape-recorded. The Hearing Officer will conduct the hearing. NYCHA will be represented by an attorney who will call witnesses.

What happens if I miss my hearing date?

NYCHA will enter a "default judgment" against you. You will be evicted if you do not do anything after you miss the hearing. If you miss your hearing date, you must apply to get your hearing reopened.

To get your hearing re-opened, go to the second floor at 250 Broadway right away and get a form called "Request to the Hearing Officer for a New Hearing". Fill out the form and explain:

1. Why you missed your hearing date (you need a good reason) and
2. What your defense is to the charges.

It is very important that you answer both questions. Make a copy of the completed form to keep as proof that you turned it in. Give the form back to the receptionist immediately. The Hearing Officer will decide whether to reopen the hearing. In either case, you will receive a letter in the mail informing you of the Hearing Officer's decision, about two weeks later.

Can I change my hearing date?

Yes, you should be able to change the date. This is called getting an "adjournment." Call the NYCHA representative if you know you can't make it to your hearing date. The telephone number is on the letter. Ask for a new date and say why you need more time. For instance, you may ask for more time to try to find a lawyer to represent you. If the representative agrees to adjourn the hearing, send a letter to the representative to confirm the agreement.

If you were not able to get in touch with the NYCHA representative in advance of the hearing date, you can also ask for more time when you go in to 250 Broadway on the hearing date. The Housing Authority is supposed to be flexible in giving a first adjournment. You have the right to ask the Hearing Officer for an adjournment if the lawyer for NYCHA refuses to give you one.

What happens at the termination hearing?

NYCHA speaks first. The NYCHA lawyer and the housing assistant for your development will present evidence against you. Sometimes there are also other witnesses, like a police officer. You have the right to cross examine the witnesses (ask the witnesses questions). Be careful to only ask questions when you think the answers will help you. The witnesses for NYCHA are not on your side. They are not likely to try to help you.

You have a right to present your case. You can explain why NYCHA is wrong and why you should not lose your apartment. You can bring your own witnesses. If you choose to bring witnesses, you should go over the things you will ask them before the day of the hearing. The hearing officer may not let your witnesses in the room until it is their turn to speak.

When you speak at the hearing, be as specific as possible. For example:

Let's assume NYCHA accuses you of having an unauthorized occupant because your son was arrested and gave your address, even though he lives somewhere else. You must do more than just state that your son does not live with you. You must **prove** that he does not live with you. You can do this either with documents (for example, a lease in his name at another address, a telephone or utility bill in his name at another address, a letter from the residential drug treatment program he is in, including the dates he has been in treatment) or with direct testimony (the testimony of the person with whom he shares an apartment).

After you are done presenting your case, the lawyer for NYCHA will have the chance to cross-examine you and your witnesses (ask questions).

What happens after the hearing?

You will get a decision in the mail about four to six weeks after your hearing. The decision will say that you are “eligible” or it will say what your penalty will be. The Hearing Officer has to explain the reasons for the decision. The Hearing Officer will choose one of these outcomes:

- a. Termination of tenancy
- b. Probation for one year
- c. Eligible subject to permanent exclusion of someone in the household
- d. Eligible
- e. Eligible with referral to social services.

These different outcomes are explained in further detail below. See the sections, “**What happens if I lose my hearing?**” and, “**What happens if I win my hearing?**” for more information.

What happens if I lose my hearing?

The most serious penalty is “*termination*.” This means that NYCHA can take you to Housing Court and have a Housing Court judge order your eviction. All NYCHA needs to do is provide the proper paperwork. The Housing Court judge cannot give you a new hearing, and will not listen to arguments that NYCHA was wrong when it decided to terminate your tenancy. The Housing Court judge will evict you if NYCHA provides all of the correct and complete documentation showing that it followed the right procedures when it terminated your tenancy.

The only way to appeal the Hearing Officer’s decision is to start a case in New York State Supreme Court called an “Article 78 proceeding”.

Try to find a lawyer right away. Call The Legal Aid Society at 212-577-3300 or Legal Services at 212-431-7200. You have to **appeal within four months** of getting the Hearing Officer’s decision. If you do not appeal within four months, there is nothing you can do to stop the eviction. An Article 78 proceeding is very hard to win without the help of a lawyer. If you cannot get a lawyer, the Office for the Unrepresented in the Supreme Court, which has a branch in all of the boroughs, can help you file the case yourself.

NYCHA sometimes waits about four months before taking you to Housing Court to evict you. By then, it will be too late to bring an Article 78 proceeding since the deadline to appeal will have passed. Remember, the Housing Court judge cannot give you a new hearing. The Hearing Officer’s decision is final. But the Housing Court judge can give you up to six months to move. Try to get as much time as you can to move.

What happens if I win my hearing?

Congratulations!

If the decision says you are “*eligible*,” you don’t have to do anything more. Keep the decision in a safe place.

Probation for one year: You will be on a general probation for one year from the date of the decision. During that year, if you or anyone in your household does anything wrong, this will be considered a violation of probation – even if it had nothing to do with the original charges. NYCHA will call you in for another hearing if this happens.

For example, you got probation after your hearing about non-desirability. Then you paid your rent late three times during that year. You violated your probation by chronically paying your rent late. NYCHA will request another hearing. You will be charged with a violation of the rule (for your current chronic delinquency in payment of rent) **and** violation of probation (for your previous non-desirability case).

Eligible subject to permanent exclusion of someone in the household: The person accused of doing something wrong must move out of your apartment and can never move back in.

BUT NOTE: you may later ask NYCHA to change this decision if you can show that the excluded person no longer poses a risk to other tenants. Contact the Center for Benefits and Services at CSS (CBS) at 212-614-5552 for more information on how to lift the permanent exclusion order.

Eligible with referral to social services: NYCHA is supposed to get social services to help you. This may occur if, for example, NYCHA finds that you need help keeping track of your finances or maintaining your apartment in good order. You must cooperate with social services or NYCHA can charge you with failure to cooperate with social services.

Community Service Society has worked to prevent community and family crises and advance economic security for New Yorkers for 160 years. Right now 82% of low income households with children in NYC include at least one full time working adult and the gap between the rich and the poor is growing. We believe that work should provide a way out of poverty and through programs, policy initiatives, research and litigation, address barriers to employment like health care, lack of employment opportunities and housing especially for the formerly incarcerated, young adults and low income people. Our "Housing Answers" brochures empower low income tenants with the information they need to solve problems.

For more information, contact
Center for Benefits and Services
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105 East 22nd Street
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For assistance call the CBS Helpline: 212.614.5552
Or visit our website at www.cssny.org

Other titles in this series:

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