


Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Deval L. Patrick, Governor ♦ Timothy P. Murray, Lt. Governor ♦ Aaron Gornstein, Undersecretary

Public Housing Notice 2013-23

TO: All Local Housing Authority Executive Directors

FROM:  Lizbeth Heyer, Associate Director, Division of Public Housing and Rental Assistance

SUBJECT: Application of Late Fee for Nonpayment of Rent
and Itemization of Tenant Rent, Fees and Charges

DATE: September 26, 2013

The DHCD Form Lease for Public Housing allows local housing authorities to charge a late fee to tenants when rent is overdue. Section II (C) specifically provides that a local housing authority may impose a \$25 late fee if a tenant fails to pay all or any part of the rent due within thirty (30) days. The regulation at 760 CMR 6.04(3)(b) states that LHAs shall impose a late fee in the event a tenant fails to pay all or any part of the rent. The difference between “may” and “shall” has caused some confusion in the application of late fees. LHAs have the discretion to charge or not charge late fees. Whichever is chosen, the LHA must apply it in a non-discriminatory manner. An LHA cannot choose to apply it to one tenant and not another or one group of tenants and not another group. M.G.L. c. 186, sec. 15B(1)(c) provides: “No lease or other rental agreement shall impose any interest or penalty for failure to pay rent until thirty days after such rent shall have been due.” The DHCD regulation incorporates this statutory restriction at 760 CMR 6.04 (3)(b).

Since rent is due on or before the first of every month, unless otherwise agreed to in writing, an LHA is prohibited from imposing a late fee until thirty (30) calendar days after rent is due. If there is an outstanding balance due moving into the following month, any rent payment received is first applied to the oldest rental obligation and then to all other rental obligations before being allocated for late fees, maintenance fees or other non-rent charges. The late fee only applies to late payment of rent and cannot be charged for non-payment or late payment of an outstanding late fee or any other type of fee that is permitted to be charged under the lease.

As you know, DHCD is striving to have each LHA reach and maintain 100 percent occupancy at all available state-aided public housing units. While it is important that tenants comply with their lease obligation to pay rent every month and on time, we all know that from time-to-time there are circumstances that arise which make this difficult. However, we remind you that DHCD regulation provides that if a tenant fails to pay all or any part of the rent within seven (7) days of its due date, the

LHA shall provide the tenant with an opportunity to discuss the reasons for the late payment prior to issuing a notice to terminate the lease, a 14 day Notice to Quit. (Reference: 760 CMR 6.04(3)(a)). This is in recognition that low income tenants, many of whom subsist on government benefits, may not have the resources to pay the rent until shortly after they receive their benefits.

It is important that LHAs have clear and open lines of communication with their tenants regarding tenant obligation to pay rent and the LHAs ability to work with a tenant when circumstances arise interfering with the payment of rent. LHAs should encourage Tenants to contact LHA staff to discuss how they can cure their outstanding rent, either through full or partial payment within seven (7) days, or at least within thirty (30) days. If payment goes beyond thirty (30) days, there is an option for the LHA and the tenant to enter into a Repayment Agreement.

If a tenant can show good cause for the late payment of rent, an LHA has the discretion to waive a late fee. In addition, if an LHA and Tenant enter into a Repayment Agreement the LHA has the discretion to waive any late fee(s). (Reference 760 CMR 6.04(3)(b). In order to determine whether or not a late fee will be waived the LHA should establish parameters under which a waiver will be allowed. This will ensure fair consistent treatment of all tenants.

Executing an informal Repayment Agreement does not infer that the LHA condones the tenant's breach of obligation to pay rent and does not waive any of its rights to proceed to eviction or collect arrearages, costs or fees if the tenant does not comply with the informal repayment agreement. (Reference; 760 CMR 6.04(3)(b)

The LHA must clearly identify the overdue amount that is rent and the amount, if any, that is a fee. In order to clearly identify what a Tenant owes, LHAs must itemize in a Statement to the Tenant the amount of rent owed each month, the amount of rent paid and the date payment was received, if and when a late fee is applied, and other charges. Other charges must be separately itemized, dated, and clearly identified. For example, if there are repairs chargeable to tenants under the lease, they should be clearly labeled as such in a Statement to the Tenant. To accurately provide this information it is imperative that the LHA record the date a payment(s) was received by the LHA not the date the LHA is entering the payment(s) into a system (ledger or computer).

We offer the following example of rent due and the application of the late fee.

Example:

- A tenant's rent is \$100 per month.
- Rent is due July 1st.
- The tenant does not pay July's rent before August 1st.
- The LHA may charge a \$25 late fee. This is because rent was not paid by July 31st.

- August 1st rent is due, \$100. The July rent (\$100) still has not been paid.
- Tenant obligation is \$200 for rent plus \$25 late fee
 - \$100 for July
 - \$ 25 late fee for July
 - \$100 for August

- On August 1st tenant pays \$100.
 - LHA applies this \$100 to the outstanding July 1st rent

- Tenant still owes \$100 for August 1st rent plus the \$25 late fee for July 1st rent.

On August 20th tenant pays \$100.

- LHA applies the \$100 to the overdue August rent.
 - Rent is now current
- The \$25 late fee for July 1st is still outstanding
- LHA cannot apply a \$25 late fee to the August 1st rent even though it was paid after the first of the month, because the rent was paid before August 31st, and it was not more than thirty (30) days overdue.

On September 1st rent of \$100 is due plus \$25 late fee for July 1st rent

Tenant obligation is \$125.

- September 1st tenant pays \$125.
- LHA applies \$100 to September rent charge and applies \$25 to outstanding late fee
 - Tenant is current in all charges.

To assist LHAs in communicating with Tenants regarding late payments of rent we have enclosed a form letter for your use. The letter should be put on LHA letterhead and signed by the appropriate staff person.

If you have any questions, please contact your Housing Management Specialist.

Attachment

LHA Letterhead

Date

Dear :

As you know, your rent is due on or before the _____(DATE) of every month. Our records show that as of today, you have not paid rent for MONTH, 201- .

Your lease has a provision that allows us to charge you a late fee in the amount of \$25 if you do not pay your rent within 30 days of the due date. This is in Section II(C) of your lease.

Please contact us by DATE to set up a meeting to discuss your rent payment. If during this meeting we both agree to a Repayment Agreement, the housing authority will consider waiving the \$25 late fee.

The amount due in rent and/or fees is:

Rent:	Fees:	Charges:	Total:
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Contact us as soon as possible at (xxx) xxx-xxxx.

Sincerely,

LHA Staff Person's Name