

**Landlords – Accepting Rent Nullifies Termination**

One of the most frequent pitfalls associated with the commencement of a holdover proceeding is the acceptance of rent after the termination of the lease. The basic principal is that if, having terminated a lease or tenancy, the Landlord accepts rent for the period after the termination date, and therefore inconsistent with the termination of the lease or tenancy, the notice of termination is vitiated. This tenet is supported by many years of jurisprudence as far back, at least, as the New York State Court of Appeals decision which held, in 1871, that:

“Any act done by a landlord, knowing of a cause of forfeiture by his tenant, affirming the existence of the lease, and recognizing the lessee as his tenant, is a waiver of such forfeiture. (1 William Saunders, 287; 2 Platt on Leases, 471; 1 Wash. on Real Property, 454.) The receipt of rent subsequently accruing from the tenant by the landlord is such an act, and the forfeiture thereby waived. (Bleeker v. Smith, 13 Wend., 530; Jackson v. Allen, 3 Cow., 220; and authorities cited by SUTHERLAND, J., 230.)” Ireland v. Nichols, 46 N.Y. 413, 416 (1871)

The specific applicability of this rule to acceptance of rent has and continues to be a generally accepted proposition by which Landlords should and must be guided.

“It has long been the law that the acceptance of rent after the tenancy is purportedly terminated and before commencement of the proceeding, vitiates the notice of termination entitling the tenant to a dismissal of the proceeding ... Furthermore, retention of the rent payment by a landlord without immediately returning the check(s) or explaining the inadvertence in not promptly returning the payment, constitutes grounds to vitiate the predicate notice.”

Top Value Homes, Inc. v. Cont'l Petroleum Corp., 2 Misc. 3d 1007(A), 784 N.Y.S.2d 924 (N.Y. Dist. Ct. 2004)



The complication for Landlords is the myriad of impediments, unlikely thought it may seem, to not accepting rent. Many rent payments are made to deposit lock boxes, by direct deposit, automatic debit, or bulk payments from third parties such as Section 8. Therefore, even under the best of circumstances there may be occasions that a Landlord tries not to but accepts rent nonetheless.

For that reason it is imperative that the Landlord’s attorney be consulted as early as possible in the event of such an acceptance of rent. Landlord’s counsel should be familiar with the exceptions to the general rule. Under the seminal case the Court of Appeals held that

“While waiver may be inferred from the acceptance of rent in some circumstances, it may not be inferred, and certainly not as a matter of law, to frustrate the reasonable expectations of the parties embodied in a lease when they have expressly agreed otherwise.”

Jefpaul Garage Corp. v. Presbyterian Hosp. in City of New York, 61 N.Y.2d 442, 446, 462 N.E.2d 1176, 1178 (1984)

Exceptions have been found which might allow an otherwise doomed case to be resuscitated including situations where:

- (a) The rent is included in a bulk rent payment and immediately returned upon discovery Macleay Woods Hous. Co., Inc. v. Franks, 16 Misc. 3d 1136(A), 851 N.Y.S.2d 58 (N.Y. City Ct. 2007)
- (b) The rent is accepted in a lock box and immediately returned upon discovery Metropolitan Life Ins. Co. v.

**Finger & Finger, A Professional Corporation**  
**Attorneys at Law**

(914) 949-0308 ext. 2

[www.FingerandFinger.com](http://www.FingerandFinger.com) ~ [esq@FingerandFinger.com](mailto:esq@FingerandFinger.com)

Attorney Advertising ~ Prior results do not guarantee a similar outcome

## NEW YORK LANDLORD ALERT

**July, 2012, Vol. 5**

Sucdad, NYLJ, Aug. 6, 1985, at 6, col 1 [App Term, 1st Dept.]

- (c) The rent is accepted for period prior to the termination date Amalgamated Housing Corp. v. Luxenberg, 8 Misc.2d 831, 833 (Municipal Ct., NYC 1957)
- (d) The rent is accepted which accrued prior to termination but included a period after termination (Subway Rests., Inc. v. Mannetti, 2003 WL 22038450 (App. Term 2003))

In every case, it is imperative that erroneously accepted rent be immediately returned and that landlord's counsel be consulted so that any additional measures may be taken to protect the validity of the termination.

New York Landlord Alert is sponsored by:

***Finger & Finger, A Professional Corporation***  
***Attorneys at Law***

(914) 949-0308 ext. 2

[www.FingerandFinger.com](http://www.FingerandFinger.com) ~ [esq@FingerandFinger.com](mailto:esq@FingerandFinger.com)

The law firm of Finger and Finger, A Professional Corporation was founded in 1974 by Kenneth J. Finger. Currently the firm has four principal attorneys: Kenneth J. Finger and Dorothy M. Finger, Carl L. Finger and Daniel S. Finger.

Currently Finger & Finger represents Landlords with free market, Section 8, HUD, ETPA, and other regulated properties throughout Westchester County. The firm processes numerous cases and appears regularly in all of the City Courts and many of the justice courts in Westchester County. The firm drafts notices to cure, notices to terminate, combined notices, three day demands, holdover petitions, non-payment petitions, leases, and other landlord tenant related documents on a consistent basis. Most important to clients is the regular and effective communication system in place at Finger & Finger, which includes not only contact with clients upon a change in status of any case, but a weekly update listing all pending cases and the status of each.

Further, the firm is counsel to the Builder's Institute of Westchester County and its subsidiary, the Apartment Owners Advisory Council. The attorneys work daily on

issues involving all areas of rent regulation and Landlord-Tenant work.

Finger & Finger practices in all aspects of real estate law, including all matters relating to landlord tenant law such as the drafting and negotiation of leases for commercial, retail, office, and residential premises. Additionally, the firm provides services in eviction proceedings and other lease related litigation thus allowing for a particularly relevant perspective to the transactional work regarding leases.

The firm represents clients in considerable litigation in real estate and related areas as well as homeowners' associations, cooperatives, and condominiums. The firm has been successful in matters involving developers, homeowners' associations, individual shareholders, contractors, Sponsors and private water districts. The firm has also represented sponsors of cooperatives, homeowners' associations and condominiums as to offering plans and thus is quite familiar with the legal requirements and also engages in collection matters against delinquent homeowners, unit owners and shareholders involving both city and local court and foreclosure proceedings.

Directly related to Landlord Tenant law, the firm has previously drafted a form "plain language" lease to comply with a change in the law at the time, written articles on Landlord-Tenant law, drafted and litigated commercial lease matters, engaged in the collection of delinquencies and holdover proceedings and other residential and commercial matters. Members of the firm have litigated matters in Federal and State Courts pertaining to housing issues, Section 8, and other HUD and Fair Housing Act related matters. The firm also represents clients in building, housing, and health violations cases, DHCR matters, and discrimination cases.

The principals write articles for legal publications, Impact - the monthly newspaper of the Builders' Institute of Westchester County, Habitat Magazine, and have been retained by other attorneys on landlord-tenant issues in federal court. They also speak at seminars and lectures in Landlord-Tenant, Cooperative, Condominium, and Homeowners' Association matters.

***Finger & Finger, A Professional Corporation***  
***Attorneys at Law***

(914) 949-0308 ext. 2

[www.FingerandFinger.com](http://www.FingerandFinger.com) ~ [esq@FingerandFinger.com](mailto:esq@FingerandFinger.com)

Attorney Advertising ~ Prior results do not guarantee a similar outcome