

## Landlords -- Rent Demand Relief

The City of New York Civil Court recently affirmed that subsequent to a summary proceeding being commenced for the non-payment of rent, the petition may be amended to include rents due through the date of trial without any predicate rent demand for such rents.

Previously, this publication discussed the case of RCPI Landmark v. Chasm Lake Mgmt. Services, LLC, 56557/11, 2011 WL 1833285 (N.Y. Civ. Ct. May 9, 2011). In that case the Court held that while efficient to include rent accruing subsequent to the demand for rent in a non-payment petition, that such would render the petition defective. The court found that because the petition, as filed, included rent not previously demanded, dismissal was required.

The significance of that holding was the impact it could have on landlords trying to bring tenants current in their rent, given the time necessary to demand rent and commence the summary proceeding, especially as rent could become due between the demand and the petition. Nonetheless, considering the demand a jurisdictional requisite, according to the RCPI Landmark v. Chasm Lake Mgmt. Services, LLC, 56557/11, 2011 WL 1833285 (N.Y. Civ. Ct. May 9, 2011) case, requires that rent not the subject of a rent (three day) demand not be included in the initial petition.

A number of Courts have relied upon the case of 1587 Broadway Rest. Corp. v. Magic Pyramid, NYLJ, Dec. 19, 1979, at 10, col 2, in holding that landlords could not amend petitions to add rents that had accrued subsequent to the service of the petition, without proof of a demand for said additional rents (501 Seventh Ave. Associates v. 501 Seventh Ave. Bake Corp., 096101/98, 2002 WL 31065240, N.Y. Co. Ct. Sept. 9, 2002, Walsam Fifth Avenue Dev. Co. v. Lions Gate Capital Corp., 163 Misc.2d 1071, 623 N.Y.S.2d 94).

Recently, however, in two instances, the City of New York Civil Court held that in fact a petition could be amended to include rents accruing subsequent to the demand predicate to the petition.



The Court in JDM Washington St., LLC v. 90 Washington Rest. Associates, LLC, 36 Misc. 3d 769, 772-73, 950 N.Y.S.2d 647, 650 (Civ. Ct. 2012) held that that RPAPL did not require an additional rent demand and that conversely the CPLR permitted motions to amend pleadings to be freely given absent surprise or prejudice. The Court specifically held that:

Accordingly, the motion to amend the petition to conform to the proof at trial is granted. Respondent of course retains any argument that undercuts the weight of the evidence offered by petitioner concerning the rent due, and it retains all its affirmative defenses.

Although in that case the Court dismissed the petition because the rent demand that was made was defective, in the case of Bldg Mgmt. Co., Inc. v. Benmen, 36 Misc. 3d 1225(A) (N.Y. Civ. Ct. 2012) the Court held that:

Once that jurisdictional requirement [rent demand] has been satisfied, there is no reason to treat a motion to amend the pleadings to include all rent due through the date of the trial any differently than any other motion to amend the pleadings. Absent prejudice or surprise the motion should be liberally granted.

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In essence, the Court found that though the predicate rent demand is a jurisdictional requirement, once satisfied the Court has obtained jurisdiction. Once the Court has jurisdiction it can permit an amendment to include rents through, as in the above case, the date of trial, and, significantly, award a judgment for the amended updated amount.

While the degree of impact of these decisions will depend on an appellate court reviewing and determining the issues, landlords can certainly take some satisfaction and comfort in the possibility of amending petitions and including all rents through the date of trial, for now.

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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.

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