

**Landlords -- Rent Demand Pitfalls**

In the last several years Courts have demonstrated a willingness to consider a variety of defenses attendant to the drafting, preparation, and service of predicate rent demands and their application to subsequent summary proceedings. What most landlords consider fairly standard and perfunctory documents can present hazards both in terms of the demands themselves, the service of the demands, and the petitions that rely upon them. Both the landlord and its attorney must be aware of the issues attendant to such demands to avoid defenses which can permit tenants to delay proceedings and ultimately obtain their dismissal at cost and inconvenience to the landlord.

“[A] proper demand for rent must fairly afford the tenant, at least, actual notice of the alleged amount due and of the period for which such claim is made. At a minimum, the landlord or his agent should clearly inform the tenant of the particular period for which a rent payment is allegedly in default ad of the approximate good faith sum of rent assertedly due for each such period,” (Schwartz v. Weiss-Newell, 87 Misc.2d 558, 561; Brusco v. Miller, 167 Misc.2d54, 634 N.Y.S.2d 246).

Retail Prop. Trust v. SHNS Corp., 28 Misc. 3d 1217(A) (N.Y. Dist. Ct. 2010)

The requirement of a detailed breakdown of the amounts due in a rent demand continues to be a requirement for such predicate notices and in the aforementioned case resulted in dismissal. Similarly, the Court held in 2229 Creston Partners LLC v. Ramos, 31 Misc. 3d 1221(A) (N.Y. Civ. Ct. 2011) that:

“Demand of an amount more than what is actually owed as such renders the predicate notice defective. IG Second Generation Partners, LP v. 166 Enterprises Corp. & Urban Outfitters, Inc., N.Y.L.J. Aug. 5, 2003 at 18:1 (App. Term 1st Dept.). As defective predicate notices cannot be amended, Chinatown Apartments Inc. v. Chu Cho Lam, 51 N.Y.2d 786 (1980), the petition is defective. Accordingly, the Court grants the motion to the extent of dismissing the petition without prejudice

to any future cause of action of the Petitioner for rent due and owing.”



The three day demand must be served in the manner provided in the Real Property Actions and Proceedings Law for service of the Notice of Petition and Petition. This means that the simple mailing of the three day demand will be inadequate to confer jurisdiction on the court and could result in dismissal of the proceeding. In fact, this suggests that more than one attempt to serve the tenant personally is required before resort to conspicuous or “nail and mail” service. Landlords and attorneys must be aware of the service requirements and risks of not meeting them.

A common practice among landlords and their attorneys that is not sanctioned by the courts is the inclusion of rent in a petition brought in the month following a three day demand served upon a tenant. So common is this practice that a court recently held that:

“[i]ncluding in the petition rent that came due after the demand was made is an extraordinarily common practice employed by petitioners in this courthouse, especially when the petition is brought in the very next month, as it was here. Including all rent due as of the date the petition is verified is efficient, as it brings the parties to court with the current amount then due. The additional month of rent sought cannot be a surprise to the tenant, who must know that the next month's rent came due but was not paid.

RCPI Landmark v. Chasm Lake Mgmt. Services, LLC, 56557/11, 2011 WL 1833285 (N.Y. Civ. Ct. May 9, 2011)

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Nonetheless, the Court in that case determined that “by unilaterally including the February rent in the petition, petitioner has attempted to circumvent the requirement of first demanding that rent. This shortcut, although common, is improper. Because the petition seeks rent that was never demanded, respondent's motion is granted, and the petition is dismissed.”

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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 including 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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