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## **HOW TO PROPERLY DEMAND THE RENT OWED TO YOU**

If a tenant fails or refuses to pay rent, a landlord has legal remedies for recovering payment. However, a landlord must follow certain legal procedures. Failure to comply with these procedures can jeopardize the landlord's ability to prevail in court and consequently collect the rent owed.

To recover any rent owed a landlord should immediately start a nonpayment proceeding upon the tenant's default. However, before a landlord can bring the tenant to court for the rent owed, a landlord must properly demand the rent owed from the tenant. This newsletter focuses on how to properly prepare and serve a Rent Demand upon a defaulting tenant.

### ***What is a Rent Demand?***

A rent demand is a formal request by the landlord to the tenant for payment of rent owed. A rent demand puts the tenant on notice of the default in paying rent so that they can cure and avoid forfeiture. A rent demand is often referred to as a "Three Day Notice" because the landlord is required by statute to give the tenant a minimum of three (3) days to cure by paying the rent owed. Before sending any notice, the tenant's lease should be reviewed, because the lease may provide additional time beyond the minimum three (3) days required.

### ***What a Rent Demand Must Contain?***

In order to accomplish its intended purpose of putting the tenant on notice of the rent owed, a rent demand must contain certain information. The rent demand must set forth the following: (1) the amount of rent (and any late fees) owed; (2) the months for which the tenant owes rent; (3) a statement that the tenant must pay the amount demanded or vacate and surrender the premises by a date certain (at least 3 days from service of the Demand); and (4) a clear explanation of the consequences of non-compliance. Please visit our websites, [www.DibbiniLaw.com](http://www.DibbiniLaw.com) or [www.BronxLandlordAttorney.com](http://www.BronxLandlordAttorney.com), and click on the Forms tab to find a 3 Day Notice form, which you can download and use.

### ***How do you properly Serve a Rent Demand?***

Proper service of the rent demand is critical. Generally, a rent demand should be served in the same manner as serving a petition and notice of petition or a summons and complaint. This process involves a process server making diligent attempts to serve the tenant. If the process server is unable to personally serve the tenant or serve another individual of suitable age and discretion, the process server can mail the Demand by regular and certified mail, return receipt requested. In some instances, a landlord may serve the tenant himself. Further, the landlord can demand the rent owed orally. However, our office recommends against such practice because it is difficult to prove the rent was properly demanded in this case.

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Please note a Demand must be made separately upon each tenant with an obligation to pay rent. The Demand should be signed by the landlord or an agent of the landlord. Additionally, the Rent Demand can only be made after the tenant defaults on his rent obligation, but before commencing a non-payment proceeding. If the demand period, frequently 3 days, elapses and the tenant fails to cure, the landlord should begin the non-payment proceeding within a reasonable period of time thereafter. Failure to bring an action for non-payment within a reasonable time may cause the rent demand to become stale and the landlord would need to serve a new one.

It is also important to note that if the amount sought in the rent demand is paid, but a subsequent default occurs, the landlord must issue a new rent demand. A rent demand that has been satisfied in full cannot serve as the basis for a subsequent non-payment action.

#### ***Rent Demand and Your Lease***

The existing lease between a landlord and tenant may modify the rent demand procedure, therefore landlords should review the lease before commencing a non-payment proceeding. Note, however, that a lease can never completely waive the requirement of a rent demand and a tenant must be given a minimum of 3 days to cure.

#### ***Consequences of a Deficient Rent Demand***

Failure to issue a proper rent demand or improper service of the rent demand may be grounds for dismissing the non-payment petition. If the court dismisses the petition, the landlord may be forced to restart the entire process, which can greatly delay collection of outstanding rent. James G. Dibbini & Associates, P.C. has extensive experience handling a wide array of landlord-tenant matters, including non-payment proceedings. We are prepared and eager to assist you with your landlord-tenant needs, so please contact us today at (914) 965-1011 or [jdibbini@dibbinilaw.com](mailto:jdibbini@dibbinilaw.com).

Our office also provides legal services in the areas of:

- Commercial & Residential Real Estate Closings
- Civil Litigation
- Landlord & Tenant Law
- General Business Law
- DHCR Representation
- Tax Certiorari
- Zoning Matters



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