

NEW YORK CITY CIVIL COURT

**N.Y.C. Civil Court Community Seminar Series –
'My Tenant Owes Me Rent'**

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[START TAPE 1 SIDE A]

MR. AUTREY JOHNSON: Good afternoon, and welcome to Housing Court's community seminar, excuse me, community seminar, 'My Landlord Owes Me Rent.' My name's Autrey Johnson; I'm a Court attorney in Queens County, and we're going to lead you through what a landlord needs to do to commence a non-payment proceeding when a tenant owes him rent. However, if there are any tenants in the room, this seminar is equally as important for you because it tells you specifically what kind of papers are going to be served on you, what the landlord's procedure is in terms of serving you. Additionally, it tells you timeframes in which, which the case is going to be commenced, when papers need to be served, and things of that nature. So, once again if you're a tenant, it's equally as important for you.

'My Landlord Owes Me Rent,'

excuse me, 'My Tenant Owes Me Rent,' step one. What do you do when your tenant owes you rent? The most important thing to the commencement of any non-payment proceeding when your tenant owes you rent is the service of the rent demand. What's a rent demand? Rent demand is Bloomberg Form 119, which I think everyone in the counties has, but I'm going to hold it up, just so you can take a look at it. This is the notice to a tenant, or the rent demand, or predicate notice as it's known in legal terms. If your tenant has a lease, this rent demand has to be, has to have five days written on it. When you have a lease, you're entitled to a five-day rent demand. If there is no lease in effect, you're entitled to a three-day rent demand. The Bloomberg Form specifically says three days; however, if your tenant has a lease, you're required to scratch out three and put five.

Next step, as you can see, on the top portion, the name of the tenant, the tenant's address, additionally, the blanket amount that they owe you, the amount in total, as well as the months that the tenant owes the rent. More importantly on this form, the clear area in between the blanket amount and the text which tells the tenant that you're demanding rent, has to have the exact months and amounts enumerated. What does that mean? If your tenant owes rent from January through February or January through March, January at \$1,000, February at \$1,000, March at \$1,000. The law requires that this form be filled out that way. If it's not filled out that way, that's a defect in your forms, and it's a basis for your case to be dismissed.

Once you're ready to have this served on your tenant, you will make a copy. The tenant never receives the

original. Let me say that again. The tenant never receives the original. Too often, the landlords come to Court and they do not have the original; they have a copy, and they attempt to commence their proceeding with a copy. We're not going to accept the copy. We need the original. So, you're going to make a copy. You're going to have a licensed process server serve it for you, or someone who's over 18, not a party to the action, resides in the five boroughs and has not served papers like these more than five times in the past year. We always suggest that you use a licensed process server. Why? The average person is not going to serve these papers correct. Service of papers is very, very particular, as are the filling out of the forms. The one place where you may want to spend a little extra money is in the service of papers. Service of papers is the one defect that cannot be

corrected. I'll say that again. There are a couple of things that I'm going to hit on and I'll repeat because they're very, very, very important. When you mess up service, it cannot be fixed. But, you're not going to learn that service is improper until you come to Court, you purchase your index number, you get on the calendar, you come into the Part, we look at your papers, and then we tell you service is defective after we've taken your money. So, rather than spending your \$45 for your index number to find out later on that service was improper, use a process server. I can't stress that enough. Use a process server.

Additionally, someone may fill out—someone may serve the papers correctly, and then fill out the affidavit of service incorrectly. If that's done, fatal defect to your case. Use a process server. I'm going to say that probably 10

and notarized. You'll hold on to that affidavit of service, as well as the original rent demand. You're then waiting, either five days for a tenant who has a lease, or you're waiting three days for a tenant who does not have a lease. Three full calendar days. If this, if these papers are served at 12 noon, on Monday, we should not see you in Court on Wednesday. Monday to Tuesday, 24 hours; Tuesday to Wednesday, 24 hours; Wednesday to Thursday. So, if a person doesn't have a lease, three calendar days of papers served the middle of the day on Monday, returns you to Court on Thursday. Five full calendar days. We tend to count Monday, Tuesday, Wednesday, but it doesn't work that way because you haven't given them the benefit of the entire 24 hours on Monday.

Once you get your affidavit of service back, you have your original rent

demand, what do we do next? You then are going to fill out Bloomberg Form 206D, your petition form. Additionally, you'll have Bloomberg Form 207D, your notice of petition form and a postcard form. Each form will be filled out by the landlord. If you go into any of the resource centers in the five counties, there are samples of these forms that you can use to help you fill them out. You're going to fill out the forms. Anywhere you see bold and black, or bold and red ink is where you need to fill something in. Lay these forms right next to each other; it's pretty uniform. You fill out exactly as it appears here. Once the forms are filled out, you'll get them notarized. You will not sign these forms until the notary tells you to sign them. Once you've signed them, you're still waiting for your time-period to pass. Once your five or three days have passed, you'll

come to Court, you'll go to the cashier's office in whatever borough the residence is, you'll purchase an index number. There's a \$45 fee for your index number. Make sure—I can't stress this enough either. Make sure that you make multiple copies of your forms. We are not above losing things, and in the event that your forms are lost and the file needs to be constructed, you have to have a copy of whatever it is that you served. So, make multiple copies of everything that you serve. Keep those copies with you. They become important, not only in the event we lose something, but when it comes to serving your papers and the index number is stamped on a form, you'll need to copy that index number to your forms. Those are the forms that you're going to serve. That original form that you bring to Court, filled out, signed, and notarized will be deposited with us. We're going to

hold on to it. That's going to be step one in your file. That's the file that's going to appear in Court if your tenant answers and you appear in any of the Resolution Parts in any of the five boroughs.

You'll stamp, you'll stamp or you'll copy the index number onto your forms. You then have to have your notice of petition and petition served on every tenant listed in your lease to let them know that we're past the request for the rent and that your formal case has begun. What happens then? Exactly, almost exactly the same thing that happens when you serve your rent demand. You have to have a process server serve it, or someone over 18 who's not a party to the action, resides in the five boroughs, hasn't served process more than five times in the past year. That person will serve the papers, affidavit of service has to be

filled out again. You'll bring that affidavit to Court within three calendar days. Also very, very, very, very important. It needs to be filed in the Clerk's office within three calendar days. If it is not, and you miss that three-calendar day period, you will then have to make what's called an unprotunct [phonetic] motion to allow for late filing of your affidavit of service and your notice of petition and petition, which only extends your case. You want to make sure you bring that back within three days so that your case, hopefully, in the event your tenant answers, will hit the calendar in a timely fashion.

Once you've brought your affidavit of service back, hopefully within those three calendar days, you're then waiting for your tenant to answer. Your tenant receives the paperwork, which they shall if everything's been served

business days from the date listed on that notice, he can effect an eviction.

However, this is very important because most landlords come back to the courthouse very angry when they realize that they don't have a money judgment on default.

If your tenant fails to answer, the Court's authority is only a possessory judgment. We cannot give you a money judgment when your tenant has failed to answer. The only time that we have the authority to give you a money judgment is when that tenant appears in the case, whether that's by answering and submitting to our jurisdiction, or making a motion to restore the case to the calendar after they've defaulted. But if it's a pure default, you're only going to get a possessory judgment, which will allow your marshal to do the eviction. The recovery of any unpaid rent at that point has to be done in a plenary action in civil court,

depending on how much money your tenant owes you.

For purposes of this seminar, let's assume that the tenant answers and there's no default. The case is calendared. You'll be on for a day in one of the many Resolution Parts in the courthouse. You go into the Resolution Part, you'll check in, hopefully, the tenant will check in. Your case will be conferenced by a Court attorney. At that point, it's your responsibility to prove that this individual owes you rent.

How do you do that? Hopefully, if you're a landlord, and technically, you're a person who's in business, you're keeping a rent ledger, and you have specific receipts over whatever time period that tenant, that tenant's lived in the residence that can specifically prove that this person has or hasn't paid rent. If you're a landlord who's in the business

of taking cash and not giving receipts, how is it that you're going to prove anything's owed? By the same token, how is your tenant going to prove that they've paid? It becomes an issue of credibility, and from the Court's perspective, we don't believe anybody. We believe what you can prove. So, as a landlord, it's in your best interest to always keep a rent ledger so that you have a running record of what's been paid, what's owed, what hasn't been paid, so when you do come to Court, you have proof, you know, that your tenant, in fact, hasn't paid. Burden then shifts to the tenant to prove that they have paid.

If they have not paid, and they can't sufficiently prove to the Court's satisfaction that the rent hasn't been, has been paid, then arrangements will be made for you to be paid. How does that normally occur? Normally, if it's a pro

se landlord, a landlord who's not represented by an attorney, the case can be settled. The tenant will be given a specific amount of time to pay the rent, if that's what you guys mutually agree to, or the tenant will consent to maybe a judgment, at which point, they'll agree that, they'll agree to give you a possessory judgment that the rent is due within a specific timeframe. Either way, the Court at that point is going to ensure that there's some mechanism in place that you get your rent.

In the event that you can't resolve it in the Resolution Part, and your tenant, you know, is of the belief that they don't owe you anything, and they think they have sufficient proof that they don't owe you anything, you'll go to trial. You'll be sent out to the expediter, and you probably won't go to trial that day. The case will be

adjourned for another day for you to go to trial, but when you do go to trial, the burden is on you to prove many things. First and foremost, you have to prove that you own the residence and that you're a party to bring this action. How do you do that?

Always have to have a certified copy of your deed. What does a certified copy mean? A certified copy usually is not the copy that you receive when you close on your house. Normally, that copy is deposited with Department of Finance, and you receive a copy of that copy. A certified copy of a deed is a copy stamped by the Department of Finance. It has a raised seal. That tells us that what's on file with the Department of Finance is the same thing as what you're presenting to us in Court. So, you'll bring a certified copy of your deed.

If there's ever been a lease in

registration number, you will not be able to proceed to trial; as a matter of fact, you won't be able to maintain a summary non-payment proceeding in our courthouse. So, it's very important that you appear in Court with those things. You have everything that you need to prove your case.

Your tenant, then, has to present sufficient proof in the form of receipts, whether they're receipts of certified funds that have been paid, whether they're receipts for cash payments that they've made to you, that they've paid their rent. If the case is decided in your favor, and the Judge finds that your tenant, in fact, has not paid the rent, you will be given a judgment, a possessory judgment, which will allow the marshal to do an eviction in the event your rent isn't paid. But, you'll also be given a money judgment for whatever money's outstanding at that

point. Your tenant will have five days to pay it. If it's not paid within five days, you will always have the ability to have your marshal make an application for a warrant, at which point, you'll be able to do the eviction.

That's just a brief overview of how we commence a summary non-payment proceeding. We appreciate everyone coming out. I'm going to be here afterwards to answer any questions, but thank you very, very...

[END TAPE 1 SIDE A]