

LANDLORD/TENANT ANSWER IN PERSON FACT SHEET (CIV-LT-91)



#5: IMPROPER RENT DEMAND

Defense # 5 says: "The Respondent was not asked, either orally or in writing, to pay the rent before the Petition and Notice of Petition. This defense is also called "improper rent demand."

Before a nonpayment case can be started in Housing Court, the landlord or owner or someone working for the landlord or owner, must demand the overdue rent from the tenant and warn the tenant that if the rent is not paid, the tenant can be taken to court. The landlord or owner can tell the tenant this in person, over the telephone, or in writing. But, if your lease says that this kind of demand is given in writing, then it must be in writing.

If it's in writing, the landlord or owner must write specific information in the demand. It must be specific and include the months and amount due. For example, the rent demand might say, "You owe the rent for June, July and August at \$900.00 per month, for a total of \$2700.00." The written demand must also say that the tenant must pay the rent owed within three days or give up the apartment. The demand can be signed by the landlord or owner, or the landlord's lawyer, unless the lease says something else. If the landlord or owner's name is typed and not signed, this may not be correct. If the written rent demand did not have any of this information, you should tell the Judge or Court Attorney when you go to court.

The written demand for rent must also be given to the tenant at least three days before the day the court papers are served, unless the lease says more days. There are only three ways to properly deliver or "serve" a written rent demand in a nonpayment case.

1. **Personal Delivery:** You are given a copy of the written rent demand (by someone who is 18 years old or older and not the landlord or owner), or
2. **Substituted Service:** A copy of the written rent demand is given to someone of "suitable age and discretion," who lives or works in

your apartment, not just someone who happens to be there (this person does not have to be an adult, but it should not be a small child). By the next weekday, except for certain holidays, two other copies of the written rent demand must be mailed to you. One copy mailed by certified mail or registered mail and the other mailed by regular mail.

3. **Conspicuous Service:** The person serving the written rent demand must come to your apartment at least two times to try to give the papers to you in person or to someone who lives or works in your apartment. Those two attempts must be at different times of the day, usually one time during working hours and one time during hours when people don't work. After those two attempts, the person serving the written rent demand can tape one copy to your door or put it under your door. By the next weekday, except for certain holidays, two other copies of the written rent demand must be mailed to you. One copy mailed by regular mail and one copy mailed by registered or certified mail.

If you did not receive the written rent demand in any of these ways you may have not been served correctly and you should tell the judge or court attorney when you go to court.

If the Judge says that the landlord or owner did not make a proper rent demand before starting the nonpayment case, the case will be dismissed "*without prejudice.*" This means that the landlord or owner made a mistake, but can start the nonpayment case against you again. It does not mean that you will not have to pay any rent that you owe. That will still have to be decided in a new case.