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October 3, 2013

RE: Commencement of Non-Payment
Summary Proceedings

Dear Client:

The Housing Courts have consistently held in recent rulings that tenants are not responsible for and cannot be sued for unpaid HPD, DHCR and NYCHA subsidies or for unpaid SCRIE or DRIE benefits. Further, in most cases, charges such as late and legal fees, electricity, appliance charges, parking and repair charges cannot be sued for as rent in a non-payment summary proceeding.

In the past, when cases have been commenced for these monies, the Housing Courts have simply dismissed the proceeding. However, now the Federal Court in New York has ruled that suing for monies which a tenant is not responsible for can lead to significant monetary damage claims under the Federal Fair Debt Collection Procedures Act. To avoid this exposure, there must be a careful review of the tenant's rent arrears history by the landlord's office and by our office to make sure the charges being sued for are rent charges before cases are commenced.

Therefore, it is imperative that the landlord's office provide us with accurate information, including but not limited to:

1. All tenants names on the lease.
2. Full address and apartment number.
3. Monthly rent, total arrears, breakdown of separate charges, if any, (i.e., parking, repair charges, etc.).
4. Type of subsidy, if any. If the tenant receives a subsidy, please provide the tenant's portion of the rent and type of subsidy, i.e., NYCHA, HPD, DHCR, RAP, Rent Supp., SCRIE or DRIE with a breakdown of how much of the money owed is the tenant's share and how much is subsidy.

Furthermore, in the event your office receives a court stipulation or correspondence from our firm that provides for an adjustment of the arrears, i.e., legal fees denied by court, abatement, subsidy monies, etc., you must adjust the tenant's account according to the Court stipulation or correspondence and provide our firm with proof that the adjustment has been made.

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Please be advised that it is important for your office to comply with the procedures as any deviation may result in further litigation seeking penalties against the landlord.

Should you have any questions, please feel free to contact the undersigned.

Very truly yours,

Howard Nemetsky, Esq.

HN:bb