

## ASK THE ADMINISTRATOR

**Question:** *I was asked by a member as to the proper procedure to handle a rent check received by a tenant who had skipped a couple of months and then started paying rent again without paying the balance.*

**Answer:** In New York debtor-creditor law, it is quite clear that a creditor is entitled to pay itself towards the oldest arrears/debt when the debtor pays its debt. Logically, that should apply to a tenant who is behind on their rent. However, in the world of Housing Court, that is not necessarily the case.

For example, in a 2009 Housing Court case where the tenant failed to make rental payments for four months and then sent in checks with no specific designations, the judge ruled that the 23-month delay in commencing the proceeding against the tenant for the missing rent was to the detriment of the owner. The judge ruled that although the law permits a creditor to apply monies to the oldest debt (which the owner did in this case), the failure of the owner to move quickly to collect the unpaid rent was fatal and the rule of laches applied. Laches is a legal defense and theory which provides that, in effect, delays in enforcing one's rights is prejudicial to the person being sued and, as such, the money owed cannot be collected. In that case, the Housing Court said the unpaid rent could NOT be

collected as part of the summary proceeding brought by the owner. That ruling meant that the owner had to sue the tenant in a separate lawsuit outside of Housing Court; such cases are not only more expensive but take much longer (yes, some things do take longer) than a Housing Court case as well.

The lesson to be learned is that when a tenant falls behind in their rent, you must proceed to protect your rights and not delay. Yes, the tenant can acknowledge the debt owed to you in writing. However, given the inclination by the Housing Court to reach results which are more likely to protect the interests of tenants and not owners, even a written acknowledgment may not be sufficient even where the tenant has acknowledged owing back rent.

*Opinion provided by Howard Stern, Esq.,  
Administrator of the RSA Legal Service Plan,  
who is solely responsible for its contents.*

## Non-Payment Workshops at RSA...



*With the many changes in Housing Court today, property owners who want to represent themselves or better understand this complex process can't afford to miss RSA's Non-Payment Workshops. Howard Stern, Esq., the Administrator of RSA's Legal Plan, leads the workshops. These highly regarded sessions are held at RSA's offices (pictured left), 123 William Street, 14th Floor. The next workshop is scheduled at 12:30 PM - 4:00 PM for:*

**Wednesday, September 14, 2011**

Seating is limited so please call (212) 214 - 9243 or fax (212) 732-0617 as soon as possible. The workshops are open to all dues-paid RSA members, but reservations are required. RSA will provide light refreshments. Please allow extra time to pass through building security.