



# QUESTIONS

## for the Self Storage Legal Network

Each month SSLN partners Carlos Kaslow and Scott Zucker will select a question from a SSLN subscriber on an important self storage legal issue and provide their best advice on dealing with the problem.

**Question:** *I have a tenant who pays his rent every month, but I believe he is using his space to operate a business (he's here all the time during the day, comes back at night and have found him using an extension cord into the unit). I can't tell what he's doing in the unit, but I'm worried that it is something that could be dangerous or even illegal. What are my rights to terminate his lease and have him move from the facility? Can I have him arrested for trespass?*

**Answer:** It would be extremely difficult to assert a criminal trespass charge against a tenant who is using his space after hours. The tenant may have committed a technical criminal trespass if the facility lease or the rules restricted hours of use. However, it is unlikely that the police or district attorney's office would become involved in such a dispute. This is a civil dispute and you have very good remedies if the tenant refuses to stop the offending conduct.

There are two provisions of your lease which are relevant to this issue. The first is the "Use" provision and the second is the "Termination" provision. The use provision should state that the unit is to be used solely for the storage of personal property. It should also prohibit business, residential and other unacceptable uses. If one of your tenants is using its rental space in violation of the use provision and does not stop when warned you have the right to terminate the tenancy. Most tenants will either comply or move out upon being warned that they are violating the rules.

You and your customer need to have a conversation about his use of the space. Make sure he understands that the space can only be used for storage purposes, he cannot engage in any business activity in the space, that he must stop using electricity and that if he continues to violate the facility rules, his right to use the space will be terminated. Unfortunately, some tenants will argue that as long as their rent is paid they have the right to use the space any way

they want. This is when you will need to consider your rights under the termination provision. In most instances a storage operator can terminate a tenant's lease upon 30 days advanced written notice and even a shorter period if provided for in the lease. For example, California law permits termination in as few as 7 days if stated in the lease. The notice must state that the rental agreement has been terminated and the date by which the tenant must remove his property from the space.

If the tenant does not vacate the space by the date stated in the termination notice, the remedy is the legal process of eviction. The eviction procedure is relatively straightforward, but before you have the right to seek an eviction of a tenant from a facility, you must verify the sending, and in many states the receipt, of the termination notice. Although the notice of termination is sent to the tenant's address provided in the lease, it is also helpful (and sometimes required by state law) to post the same notice on the tenant's storage unit. It is crucial that if the tenant does not vacate, that the facility *not* accept additional rent payments. By accepting any rent, the notice to terminate is then waived and the notice to vacate is voided. If the tenant attempts to pay, the payment must be returned. Storage operators should have an attorney to assist them with the eviction proceeding. Evictions have technical legal procedures and few storage operators will have the necessary experience to do this on their own. So if the tenant does not leave by the termination date, refer the eviction problem to your lawyer.

Use violations are an ever-increasing problem at self storage facilities and operators should not ignore them. If an operator allows a tenant to use a space in violation of the use provision, the facility could be found liable if other tenants are injured or their property damaged by that use. Also some tenant uses may violate zoning, land use or health and safety regulations. Storage operators need to inform each tenant at the time of rental that a self storage space is only to be used for the storage of property. It is not to be used for active business purposes. ❖