



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: *We have a customer who rented a space and had a package dropped off at our facility by FedEx. We have one of the keys to the lock and allowed the driver to place the package in the storage space. The customer signed a document that clearly states that we do not charge for this service, that it is solely for the benefit of the tenant and we are not liable for loss of or damage to the property. The tenant now wants us to arrange for having the package shipped to a person who has bought the item. We do not want to be involved in this tenant's business. We have told her that we cannot arrange the shipping but will cooperate if she arranges it. The package is the only item in the space. If the package is picked up, can we send out a termination notice and refuse to accept any further shipments? After the termination date, if the space is empty can we re-rent the space?*

Answer: You are wise not to get involved in the tenant's business. You are a self storage operator, not a warehouse operator. While it is common for a self storage operator to cooperate with tenants who have property shipped to the facility, you need to act carefully when you keep a key and accept shipments. Your procedures appear to be well thought out. You do not accept the shipment but only facilitate its delivery to the tenant's space. You also have an addendum specifically dealing with your keeping a key for the tenant and accepting shipments.

Keeping keys and performing services can create legal issues for self storage operators. Office and apartment landlords often provide such services and courts have ruled that they continue to act as landlords. However, it riskier for self storage operators to provide these services. Some judges are more likely to view a self storage operator as a bailee under such circumstances. It is good that the property is dropped in the space by the shipper. The document that you use will be very important and helpful in the

event of a lawsuit. You should also have protocols in place to secure the keys that you retain for this tenant.

However, your cooperation for this tenant should stop there. You have no obligation to continue to arrange shipping for this tenant. You run a self storage business and are not a freight forwarder. The tenant wants you to provide services that are beyond those you should be willing to undertake. Simply tell the tenant that you cannot arrange to have her package shipped. The tenant should be able to arrange to have the package picked up from your facility.

You can terminate the tenancy once the package is picked up. You must send the tenant written notice of termination as provided for in the rental agreement. You can also send her notice that you will no longer accept shipments. As stated in your agreement, you are not charging for this service and it is an accommodation for the tenant. You can withdraw providing this service at your discretion. If the tenant does not remove her lock from the space and has not placed any additional property in it, you can remove the lock and reclaim the rented space when the notice of termination becomes effective.

Your question is very timely. The self storage business is changing and many storage operators are providing additional services for their customers. In a tough rental market many storage operators have concluded that they must do more than simply provide space. Storage operators now offer trucks, sell supplies and offer additional services for customers. Storage operators who decide to offer additional services to customers should develop sound service documents. Additional services should not be provided without written documentation of the nature of the service; the cost, if any; and the duties of the storage facility. It is also wise to discuss the new service with your insurance agent to make sure that your current insurance policy covers these new liability exposures. You do not want to discover you do not have insurance after you have received a claim. ❖