



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 question regarding a customer claiming theft at the time of making a cash payment. The customer came in to make a payment on his unit. He was over two months late and owed rent plus late fees. After making the payment to bring his account current, he left the property. He called the facility a few hours later and claimed that he had overpaid the manager by \$100.*

In response, we checked the receipt that was issued to him, counted our cash, reviewed our office videos, and did not find any evidence of an overpayment or the manager pocketing any money. We notified the customer, but he said that if he does not get his money he will take legal action, including going to the police to report that our manager stole his money. What should we do? Do we have to pay the customer \$100?

Answer: This situation raises a difficult issue for any business. How do you respond to a small dollar claim by a customer that you believe is based upon a mistaken belief or may even be fraudulent? The facts support your view that the tenant paid what was owed and this was properly credited to his account. You conducted a cash reconciliation, reviewed the office video records and discovered no evidence of overpayment or the manager pocketing the \$100. He can bring a claim for overpayment, but it will take more than mere allegations to prevail. Also, his threats of police involvement are not credible.

Unfortunately a business will find itself in a situation where even though it may be right (and the customer is wrong) the business may decide to simply make the customer happy. Even though there is no proof that the customer overpaid, the solution may be to pay the customer the \$100 and hopefully buy not only some peace but also earn some customer satisfaction. It is abundantly clear these days that a bad online review can hurt a business. When the dispute is over a \$100, it may be a better strategy to settle the claim rather than to battle over it.

If you decide to settle, we strongly recommend that you get a signed release of all claims. The release will state that the payment of \$100 is *not* an admission of any wrongdoing, but only an effort to resolve a disputed claim. It will also state that in consideration for the payment the customer releases both the facility and its employee from any claims, demands or actions arising from the dispute.

If you decide not to settle this matter (especially because there are allegations of theft and this is not a model tenant), you should politely but firmly tell the tenant that you have concluded an internal investigation and there is no evidence of an overpayment. The customer could go to the police and swear out a complaint for the theft.

However, it is very unlikely that an arrest warrant would be issued, not only because the facts don't support a claim of theft but also because the police will likely consider this to be a civil matter. They will probably suggest that the customer go to small claims court. The customer could file suit against the facility. If he does, the customer will have the burden of proof to show that the cash was incorrectly counted or that a theft occurred. He will need actual proof; mere allegations will not be sufficient.

Your accounting and video records support your conclusion that the cash received was applied correctly, that no theft of funds occurred and that the tenant is mistaken. These records should be preserved in case of a suit. The biggest obstacle for the tenant will be that he made the cash payment, was given a receipt of the amount paid and that amount was applied to his account. There is simply no objective evidence to support his claim that he overpaid. Again, we think the biggest risk to the facility is having an unhappy customer rather than the legal action. You need to do whatever you believe is right for your business and your employees. Unfortunately, determining whether to fight or settle when the economic stakes are small is not an easy decision. ❖