



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: A rental center has notified us that one of our customers has a TV and Xbox in his unit that belongs to the rental center. They have verified the customer's name and are sending us a copy of the rental contract. What other steps do we need to take before we allow the rental center to take the property? The tenant is not paying rent on the space. Do they have to pay the bill to get access? Our tenant told the rental center that he is not going to pay the rent anymore for his unit.

Answer: It is not uncommon for tenants to store property that is subject to a security interest or belongs to others. Occasionally storage operators will get an inquiry from a business that rents or sells furniture and appliances. A "rent-to-own" company is the legal owner of the property until the lease agreement is completed. Other companies use a financing agreement to secure payment until the debt is paid off. Such companies retain title to the property and record a lien with the state to secure their interests.

As to whether lienholders have the right to recover the property from a storage unit before the tenant goes into default on the storage space, the answer is generally no. A tenant who is current on its rent has exclusive control over the storage space. Only the tenant has the right to allow the creditor access to the space and to recover the property. The fact that the rental company had the tenant's name and other information suggests that it was the tenant who told the company where its property was located. If possible you should contact the tenant to determine if he wants the property to be turned over to the rental company.

Even when rent is current, a storage operator must comply with valid court orders requiring the operator to turn a unit over to a judgment creditor. Unless the company claiming the property has the permission of the tenant or a court order, the storage operator should not give a claimant access to the tenant's space. The tenant's permission to repossess the stored property should be in writing.

The situation changes when a tenant goes into default. The operator will have sent statutory lien notices to the tenant and known lienholders. The operator also may have the right to deny the tenant access to the unit. If the tenant does not cure the default within the statutory period, then lienholders will usually have the right to recover their property. Whether lienholders are required to pay the facility operator to recover the goods will depend on the applicable state self storage lien law. Some states, such as California and Washington, require a company repossessing the property to pay all (Washington) or part (California) of the rent to take the property. Many states require the facility operator to defer to the company repossessing the property when it has a superior interest in the stored items.

In your situation the tenant is not paying the rent, so you can work directly with the rental center. Ideally, you will get written confirmation from the tenant that the space contains property owned by the rent-to-own company and instruction to allow them to repossess their property. However, written permission from the tenant is not required when the tenant is in default. You will want to review the lease that the company sends to you and confirm that the items covered by the agreement are in the storage space. The company or its representatives can only take the specified property. All other property remains in the space.

Most property in self storage units is not subject to a lease contract or security interest. However, when tenants stop paying rent, the self storage operator may discover that some or all of the stored property is subject to a security interest. A security interest may be disclosed in the rental agreement or found in a lien search. The operator should communicate with all of the tenant's lienholders and attempt to resolve a tenant's default. The lienholder may be a source of payment for all or part of the outstanding rent. In most instances the operator has a better than even chance of recovering some money from the tenant's lienholders to reduce or eliminate the tenant's unpaid balance. ❖