



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 unit that was affected by a broken sprinkler head caused by another occupant. The occupant with the alleged water and mold damage refuses to come to the facility and move their property. The occupant believes that we should move the property for them. I have explained we can't touch or move their items and that they need to go through the contents to determine their damages, if any. We have even offered free rent for the new unit. I am at a loss of what to do. If we believe this is an emergency and that there could be mold spreading to other units, can we cut the lock? And if we enter the space, what do we do with the potential damaged/moldy items?*

Answer: You have already taken the most important step by notifying the occupant of the water problem and that the property in the space must be relocated to prevent more damage. While the occupant's attitude is not helpful, it is understandable. However, you are not hamstrung by the occupant's lack of cooperation. This situation does not affect just the occupant's stored property but the entire facility. The solution is most likely in your rental agreement.

The typical self storage rental agreement grants the owner access in these types of situations. While it is always best to work with occupants and secure their cooperation before entering the storage space, it is not always necessary. You have the right to enter with advanced notice to the occupant (and in an emergency without any notice). Your rental agreement should have a paragraph that grants you these rights and should look something like the following:

OWNER'S RIGHT TO ENTER: Occupant grants Owner or Owner's agents access to the storage space upon 24 hours advance written notice to Occupant. If Occupant does not remove the lock as requested, Owner may remove Occupant's lock and enter the space. In the event of an emergency or nuisance, Owner shall have the right to enter the space without notice to Occupant, and take such action as may be necessary or appropriate to preserve the premises, to comply with applicable law or to enforce Owner's rights.

This paragraph gives the owner broad rights to enter the space even when the occupant cannot or will not cooperate in giving the requested access. Before taking such

unilateral action, you should contact the occupant (preferably in writing if time permits; e-mail is fine) and request that the occupant sign a form giving you the right to cut the lock and move the property to another space. The form should also release you from liability for taking these actions on the occupant's behalf. If the occupant continues not to cooperate, you can cut the lock and enter under the authority granted by the rental agreement. If you do decide to enter the space you should take pictures or video of the lock cutting process and the appearance of the property in the space. This will also allow you to assess the condition of the property and to determine whether moving the property to another space is the best course of action.

If the occupant will not cooperate, you need to act in the best interest of the facility and the other occupants. However, you should keep the occupant informed of your actions. If you determine that some or all the property is a total loss, cannot be salvaged and must be disposed of, this should be communicated to the occupant before removing the goods. Again, a non-cooperative occupant does not prevent you from acting and the law provides you with protection if you act reasonably and keep the occupant informed.

The rental agreement provides you with another remedy in this situation. You can simply terminate the occupant's tenancy and require that the occupant vacate the space within the time period provided for in the rental agreement. This will usually be 30 days with prior written notice, or a shorter time period if it is provided for in the rental agreement. This may further irritate the occupant, but it is the occupant's non-cooperation that makes this action necessary.

Before taking this step, you can have a conversation with the occupant that it is necessary for them to come to the facility and remove the property from the space. You can even offer to provide the occupant with help and make it as easy as possible; but if the occupant does not cooperate, you will need to terminate their tenancy. The goal is clearly to get the occupant's cooperation in dealing with the problem. Unfortunately, the lease termination (and notice to vacate) may be the best option if the occupant continues to refuse to be helpful. ♦