

Mini- Storage Messenger

Abandoned Property

This month's question from an Operator surrounds the issue of abandonment. In this case, an occupant had partially moved out of the unit leaving some of their property behind and the unit unlocked. The next time the Operator did a lock check he found the unit unlocked looking ransacked. The Operator contacted the Occupant thinking there had been a break-in and the Occupant said: "We haven't decided whether we are done moving out yet. We may leave the rest and keep the unit, we may just abandon the rest or we may come back and get the rest of our stuff." Can the Operator declare the unit abandoned and if so, what are the risks?

While the above question is fact specific to a telephone conversation with the Occupant, I would rather address the issue broadly and talk about the risks anytime you decide a unit is abandoned. Let me start by excluding from this article a unit that you find unlocked, empty, swept clean, but no notice from the tenant that they have vacated. Rather, this article addresses the situation when you find the unit unlocked or cut off a lock for an inventory and find what appears to be "garbage" that does not appear to you to have any value. There are substantial risks in declaring the unit abandoned. When my clients call me with that type of scenario I provide them the warnings that I will describe below and then I always tell the client that declaring an abandonment is a business decision. You have to understand the potential exposure from the tenant and if everything goes wrong you have to be ready to accept the risk that the tenant may make a claim against you. If you have the stomach for this then, depending on the facts and what specifically is left, it is your decision whether or not to declare the unit abandoned.

Several years ago Public Storage in California sold a unit containing boxes of papers. These papers unfortunately turned out to be all of Malcolm X's personal papers. While Public Storage, to the best of my knowledge, did not do anything wrong, was entitled to conduct the sale, and actually spent a good bit of money trying to block the sale, I contend that if I ever asked Public Storage they would tell me that they would not have sold the unit had they known the value of the contents eventhough the unit was in default and Public Storage was entitled to sell it. I have never asked that question, that is my guess. It points out the old adage could never be more true, one man's trash is another man's treasure.

When you find a unit with what appears to be nothing but garbage left in it locked or unlocked, but particularly unlocked, it is tempting to convince yourself that the tenant has abandoned the unit that what is left is nothing but trash, to clean it, and re-rent it as quickly as possible to a “good paying” tenant. However, once you dispose of that “abandoned” property it is difficult to go back and prove that it was, in fact, just valueless garbage.

The risk you run is that the tenant could come back and say “what happened to the rest of the stuff in my unit, I was in the middle of cleaning it out when I made a trip back to find the contents in my unit gone, the unit empty, the unit locked with a new lock or with one of your overlocks, where is my stuff?” Once you tell the tenant that the personal property is no longer in your possession, that is has been thrown out you run the risk of the tenant “creating” a list of items that they contend remained in the unit and that you had no right to just dispose of these valuable items. I had a case once where the tenant claimed that they were storing full length and half length mink coats, leather coats, gold bouillon and cash in the unit. This particular tenant claimed that my client entered the unit, took out the good stuff then photographed the unit showing nothing but some trash, kept the good stuff, threw out the bad stuff and the tenant made a significant dollar value claim against the Operator.

The Operator’s risk is that since you have other remedies that you could have exercised and did not, you run the risk of a judge looking at this case and saying since you did not conduct a lien sale or conduct an eviction or used other remedies as your state may allow, you took the “short cut” that I now have to hear this case and determine whether or not I believe the tenant over you about the contents of the unit.

Merely taking a still photograph of the unit without videotaping the lock cut and the door being opened exposes you to greater risk and that by videotaping the unit, if the unit was locked and you open it, video does not provide additional protection. This is not the case when the unit is found unlocked.

We have seen cases over the years in self storage as well as eviction where the judge has been forced to look at an issue of disposal of property after a non-payment situation where the landlord deemed the premises abandoned. Almost universally the judges have scolded the landlord for not taking advantage of a remedy that they had and exposed themselves to this additional layer of inquiry. What this means is, you have a remedy such as a lien sale or an eviction you ought to use it and you should be hesitant to use the remedy of abandonment.

Judges are finders of fact. In order to reach a determination about what the facts are judges have to weigh credibility. It will be your credibility against the tenant's credibility about what was in the unit. It may be hard to convince the judge that your inventory or your recollection is accurate when you have disposed of the property since you had these other remedies. The judge does take those things into consideration when weighing the credibility to determine who is telling the truth in the case.

Naturally there are defenses, such as gold bouillon being stored in a self storage unit may violate the lease, may violate the value of limitations of the lease, etc. and of course who has gold bouillon in their unit and cannot afford the \$75 or \$100 a month rent? These are all things that are going to have to be raised well into a litigation process and again go to the credibility which may eventually lead you to a win but, you will have had time in court, potential attorney's fees and other aggravation as a result of it.

Weigh those costs, attorney's fees, expenses, and aggravation versus the time and energy allegedly saved by declaring an abandonment.

You can send your questions, comments, or suggestions for future topics to Jeffrey Greenberger at info@selfstoragelegal.com or mail them to Jeffrey Greenberger c/o Katz Greenberger & Norton LLP, 105 E. Fourth Street, Suite 400, Cincinnati, Ohio 45202 or you can reach Mr. Greenberger at (513) 721-5151, or visit his website at www.selfstoragelegal.com.