

## Mini- Storage Messenger

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This month's question is from a manager in Indiana.

*QUESTION: I have a tenant who I have put into default for non-payment. Once I sent the Certified Letter Default Notice the tenant called me and said that he paid all of the rent in cash at our drop slot one night after we had closed. Tenant now says if we proceed with the sale he is going to sue us. It seems to be my word against his, what do I do?*

Answer: This is not an uncommon concern with operators who have a rent drop box. There are however some precautions you can take, or if you have taken them already that will help you avoid this type of issue.

The first and most obvious solution is to eliminate the night drop box in its entirety, that may not however be practical. I certainly understand most operators are hesitant to eliminate the night drop box in its entirety, but you can certainly see how they cause exposure. The second option is a technology solution if you can afford one, install a self-storage kiosk at your facility and eliminate the drop box. This will provide not only video and computer records of whether the tenant tries to pay rent, but some of the more advanced kiosks can even keep track of whether cash was paid how it was paid, etc. and the money should be locked up in the "safe" part of the kiosk so there should be no dispute.

Other than those two solutions, a lot of what you can do to reduce these sorts of problems or set up a better defense for yourself in the event one of these problems arises from the drafting of your lease agreement and putting a bit of thought into how you expect things to work at your facility. First, your lease should provide how and where rent can be paid. If you have concerns about a drop slot you might be better switching your tenants to a pay through a post office box system or bank lock box. For example you can change your lease to say all rent shall be paid at P.O. Box "x" and hand out payment envelopes to your tenants. This system will not prove whether a tenant paid or not but it is in theory a bit more secure especially if the bank handles the payments. Another thought to address some of the problems is to put a "no cash in drop slot" type sentence in your rent payment portion of your lease. The provision reads something like this "Cash can only be accepted during office hours. Do not deposit cash in the after hours drop slot. Operator is not liable for any cash placed in drop slot. Occupant is encouraged to obtain a rent receipt for cash payments." While that will not solve the entire problem, at least it gives you a

better defense in court taking some of the burden off you as the operator because you can point out where you warned tenants not to pay cash through the drop slot.

It would also seem appropriate to focus one of your video cameras on the office/drop slot area. If there is a question of manager integrity and your tenant makes assertions of an approximate date and time they paid, it is easy to go back and review the tapes of the area around the drop slot on the alleged times and dates of payments.

Of course none of the lease change and videography suggestions are absolute solutions to your problem, but they would certainly give you a much stronger leg to stand on in court.

In your particular situation I certainly hope you have either some video evidence showing the tenant was not there as alleged or at least some lease language that prohibits cash in the drop slot. If not, you really do have a risk of some exposure. The best conservative answer I can give you is to consider making some of the changes we have suggested and starting the default process over on this tenant. Yes, the tenant may be taking you for a ride and may get a few extra free months of rent from you but, a sale under the best of circumstances exposes you to liability. In this case where you know the tenant is asserting a defense in advance of the sale it is probably best to step back and start again. The money it will cost you in "free rent" will still be less than the attorney's fees and risk that you face if you forge ahead and sell this tenant's unit and the court believes that the tenant paid by cash (thus Tenant was not in default at the time you proceeded to sale). Also, just because you are starting default over again does not mean that you are giving up your claim to that rent. If you default again and end up selling the unit you can still assert the full deficiency including the earlier months of default in your balance due. This can be reported to a credit bureau or collected via a lawsuit. It would be up to the tenant to assert that the balance due is inaccurate and in a regular collection case it is my opinion that the judge would have less sympathy for the tenant on a straight money type claim for being stupid enough to have allegedly put cash in an unattended drop slot than if the tenant were in court crying about all the property that you wrongfully sold.

You can send your questions, comments, or suggestions for future topics to Jeffrey Greenberger at [info@selfstoragelegal.com](mailto: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](http://www.selfstoragelegal.com).