

FIVE THINGS TO THINK ABOUT IN YOUR RENTAL AGREEMENT IN THE NEW YEAR

By Jeffrey J. Greenberger, Attorney at Law
GREENBERGER & BREWER, LLP

Now that we have all survived the holidays, and before we all get busy with Spring and Summer business, it is a good time to take a look at your Rental Agreement and see if it needs a spring cleaning before you continue using it in 2019.

Here are a few things I like to look at when reviewing a Rental Agreement:

1. Am I current with the requirements of my state law? The National SSA, and your local SSA, have been on a legislative hot streak over the last several years, updating and modernizing lien statutes. Depending on your state, there may have been changes to the method by which you send your lien notice, changes to advertising requirements, allowing for towing of vehicles, clarifying contractual limitations of liability in Rental Agreements, establishing a safe harbor late fee, recognizing online auctions, tow vehicles, and giving you the ability to sell tenant insurance via a limited lines license. If you have missed an update to your lien statute, you may be in a bad position with your Tenants, and if your Rental Agreement is not updated to reflect these changes, you may be contractually obligated to do it "the old way". An example: if your statute has been updated to allow for service of the lien notice by Verified Mail or email, this is a wonderful change in your state and you should take advantage of the much lower postage rates afforded to you by Verified Mail, or potentially email. However, if your Rental Agreement still states that you will send lien notice by Certified Mail - Return Receipt Requested, and you still charge a certified mailing fee, you have, by your contract, prevented yourself by being able to make that change, until you update your Rental Agreement and update the terms with the existing Tenants.
2. Check to make sure you have the required statutory language within your Rental Agreement. Most state statutes provide some amount of mandatory language, mandatory statements, mandatory questions, and

- in some states, even affirmative assent, to be part of the Rental Agreement. Missing these requirements could, in some cases, invalidate your lien rights, and prevent you from being able to sell a unit, if the Tenant goes into Default. Make sure whatever is required to be in your Rental Agreement, is in your Rental Agreement, verbatim. I see people take liberties with the mandatory language. If your statute says the Rental Agreement shall contain a statement saying "x", use the exact terminology from your Statute. Don't forget to notice any other requirements such as a requirement that a statement be conspicuous, in bold type, or underlined. Missing simple words can completely change the effectiveness and enforceability of your Rental Agreement.
3. Make sure your Rental Agreement discloses all of the fees and charges that a Tenant could possibly incur, especially if the Tenant goes into Default. Many Operators don't like to list the default fees in the Rental Agreement because they do not want to scare anyone, and instead, only tell the Tenant about the default fees, when they send out a Default Notice. An example would be assessing a lock cut fee or inventory fee as a result of the Default. The problem is, when you announce those fees in your Default Notice, you are changing the actual contract while Tenant is in Default, and there is a valid question, as to whether or not those sorts of changes are actually enforceable. Do not be afraid to disclose your default requirements to the Tenant. The easiest thing to say is, "These things, they only apply if you are in Default, and you shouldn't get into Default". Anyone who wants to argue that point with you, should probably be rejected from tenancy in the first place.
 4. Make sure your Rental Agreement clearly defines the "Rules of the Road". If you have rules about when you stop accepting checks, whether or not you will accept cash, when you would refuse a credit card payment (for example, many Operators refuse credit card payments within a certain number of days of sale, preferring cash or cashier's check) or if you have rules about when a payment is considered received and accepted. Let the Tenant know these rules in the Rental Agreement. The idea here is, you are trying to avoid people saying that you somehow treated one person differently, or in a discriminatory manner over another. It is smarter to explain those sorts of rules and procedures up front, in the Rental Agreement, rather than having someone allege later, you did not accept a check, because of their color, race, etc., when in fact, it has always been

your rule that you don't accept a check after someone is a certain number of days late.

5. Make sure your Rental Agreement means what it says. I see many Rental Agreements where the Rental Agreement says something that is inaccurate about how you operate your Facility. A common example comes with prepaid Rent. Many Rental Agreements say if you prepay your Rent, Operator can still raise the Rent during that term, and the prepaid Rent will simply be applied to the new Rent. Think about it, if you have a Tenant leaving the country to go in the Peace Corps for a year, and prepays her Rent at \$100.00 a month in advance for the year, and in month 3, you raise the rent to \$120.00 a month, within 5 months, your Tenant will be more than \$100.00 behind in Rent, and will be in the Default process. You knew your Tenant was leaving the country and would be unreachable, but you sell her anyway. When I ask this question of clients who have such a provision in their Rental Agreement, they always say, that is not what they actually do, and they don't even know why that language is in the Rental Agreement. If you have clauses that you do not understand what they mean, or say things that you don't actually do, clean them up or get them out. You are only setting yourself up for unnecessary legal challenges. The simplest rules are learned, as they say, in Kindergarten. If you're not actually going to do it, don't say that you're going to do it.

Consider spending a few dollars to have your local attorney or a self storage attorney give your Rental Agreement a review, and give you some recommendations about how to tune up your Rental Agreement. After all, you may be a sophisticated business operator and extremely successful at marketing, building, and developing properties, but leave review is its own special animal. Consider having someone professional help you, make sure that you are in compliance with the statute, and that your Rental Agreement represents a true representation of how you operate your Facility.

Jeffrey J. Greenberger is a Partner with the law firm of Greenberger & Brewer, LLP, in Cincinnati, Ohio and is licensed to practice in the states of Ohio and Kentucky. You can reach Jeff at (513) 698-9350 or info@selfstoragelegal.com.