



Keys To Strong Parking, Storage Contracts For NYC Buildings

By Matthew Eiben and Adam Lindenbaum

Law360 (July 10, 2024, 6:04 PM EDT) -- It is essential that cooperative and condominium managers and boards carefully review their storage and parking agreements to ensure all necessary terms and remedies are included.



Indeed, in a recent case in the Civil Court of the City of New York, it was affirmed that an owner could utilize the remedy of self-help eviction to remove a nonresidential occupant — thus avoiding the prolonged process of litigating in housing court or other forums — as long as the eviction is done peaceably and where the underlying license agreement expressly permits such a remedy.

Parking and storage units are valuable amenities in New York City's co-op and condo buildings and an impermeable agreement can minimize legal exposure and potential headaches for the Board and management.

The License Agreement

In buildings where the parking and storage units are not owned by the individual occupying them, the use of the units should be governed by a written license agreement. It is crucial to ensure that the agreement maintains its status as a license rather than a lease, as leases create additional legal hurdles and potential tax implications. Here are key tips for crafting an unambiguous license agreement.

Refer to the agreement as a license and define the parties as "licensee," the resident using the unit, and "licensor," the cooperative or condominium.

Include a clause to allow either party to terminate the agreement for any reason or no

reason with specific notice, e.g., 30 days' email notice.

Define any monetary payments as license "fees" instead of "rent."

Essential Terms of the License Agreement

Clearly identify the unit with an ID number and location on an annexed diagram.

Define the term of the agreement, monthly or annually, and provide for automatic renewals to avoid tracking expiration dates.

State the license fee and include a provision allowing fee changes during the term upon notice to the resident.

Detail permissible and prohibited uses, such as banning the storage of valuables, combustible materials, perishables, scented items, liquids and living items.

Include a risk clause with language stating that storage is at the resident's own risk.

Limit use to owners only, excluding nonowners, subtenants, guests and nonresidents.

Enforcing the License Agreement: The Remedy of Forcible Reentry

The first step in enforcement is to review the agreement for specific procedures or notice requirements regarding early termination.

For storage or parking license agreements, after serving any and all notice defaults

required under the license agreement, self-help can be a viable enforcement option.[1]

Self-help allows landlords to forcibly regain possession of the licensed premises without a formal eviction process, provided it is explicitly permitted in the agreement and executed without breaching the peace, i.e., in a manner that is likely to cause physical or verbal altercations. This method is cost-effective and expedient, but must be carefully executed to avoid potential liability.

On March 22, the Civil Court of the City of New York held in *AYU New York Inc. v Premier 225 Tenth Avenue LLC* that an owner of a commercial condo unit had every right to change the locks on a space licensed for use by an art gallery when it failed to respond to a three-day notice of termination for nonpayment of license fees. The owner was able to act through the "remedy of self-help," as was expressly permitted in the parties' license agreement.

The petitioner in *AYU* sought to be restored to possession on the ground that its ouster from the licensed premises was forcible. However, for reentry to be forcible it must constitute a breach of the peace, be conducted in an unruly manner or threaten violence.

The court held that the ouster did not breach the peace, where it occurred after business hours. In fact, the court noted that licensee had admitted in its petition that it was not aware the ouster had occurred until the

following morning — thus confirming that the ouster had been effectuated without any breach of peace.

The remedy of self-help is infrequently used in New York because courts generally disfavor the application by commercial landlords as it effectively results in the tenant's forfeiture of the premises without affording the tenant the opportunity to adjudicate their right to continued possession. This judicial stance arises from the principle that tenants should be entitled to due process, ensuring any disputes regarding occupancy are resolved through the judicial system rather than unilateral landlord actions.

Self-help carries risks, such as claims of property damage or loss. Engaging a licensed and bonded moving or towing company to remove the property and storing it for 30-60 days is advisable. Further, it is advisable to provide the licensee with repeated written notice to ensure they have ample opportunity to remove their property before any forcible reentry.

In some cases, a formal eviction proceeding may still be necessary, particularly if the resident does not live in the building or is unlikely to receive default notices, or the property is valuable or difficult to remove.

Conclusion

Drafting and enforcing parking and storage unit license agreements are essential tasks for co-op and condo boards in New York City. Clear, fair and legally sound agreements help maintain the value and functionality of building amenities while protecting residents' interests.

Correction: A previous version of this article misstated what type of business Premier 225 Tenth Avenue LLC is, mischaracterized the court's holding on when self-help eviction would have been acceptable, and did not disclose the firm's involvement in the case discussed. The errors have been corrected.

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