



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 20, 2007

CBCA 601-RELO

In the Matter of CARLOS J. DELGADO

Carlos J. Delgado, Kansas City, MO, Claimant.

Brigitte Brown, Chief, Employee Services Branch, Civilian Personnel Operations Center Europe, Department of the Army, APO Area Europe, appearing for Department of the Army.

HYATT, Board Judge.

This claim concerns an employee's entitlement to reimbursement of expenses incurred by reason of the premature termination of a lease of an overseas residence incident to a permanent change of station move.

Background

Claimant, Carlos J. Delgado, a civilian employee of the Army Corps of Engineers, was transferred from his overseas post of duty in Germany to Kansas City, Missouri, in 2006. He was notified of his impending transfer in January 2006. His travel orders provided for a report date to Kansas City of March 19, 2006.

Mr. Delgado's travel orders authorized reimbursement of lease-breaking expenses in accordance with paragraph C14000 of the Joint Travel Regulations (JTR). Shortly after receiving official notice of his transfer back to the United States, Mr. Delgado notified his lessor, by letter dated January 9, 2006, that he would be vacating the premises early. The lease provided that in the event of a transfer, claimant could terminate the rental agreement upon three months' advance written notice, effective the last day of the calendar month. Mr. Delgado was not authorized to sublease the premises without first obtaining written consent

from the landlord. Mr. Delgado was also required to pay a security deposit of 1050 euros to be retained in a separate account by the landlord. The lease provided that the security deposit would be refunded to the tenant, with interest, upon vacation of the rented property, provided the tenant had not caused damage to the unit above and beyond normal wear and tear and all debts had been paid.

Mr. Delgado has explained that under German law, the landlord was required to provide tenants with heating and cooling. The monthly rent payment included an estimated amount for heating and cooling, prorated over a one-year period, with the proviso that actual utility costs would be settled on a yearly basis. After receipt of the bills, the landlord was to promptly calculate a final bill, to be provided to the tenant. If the actual cost of utilities exceeded the estimated amount included in the rent, the tenant would pay the additional amount; if the actual cost was less than the prepaid amounts, the surplus would be refunded by the landlord.

Mr. Delgado asserts that since he gave notice in mid-January, he was required to pay rent to the landlord through April 30, 2006, per the requirement for three full months' written notice through the end of the third month. He seeks reimbursement of the security deposit, which he states was forfeited by reason of his early termination of the lease. According to Mr. Delgado, although heating and cooling costs are amortized across a one-year period, the lion's share of these expenses is attributable to the cost of heating the premises. In this case, his occupancy of the premises under the lease occurred primarily during the winter months, when the landlord was providing heat to the unit. The rental payments would thus have been inadequate to cover the full cost of the heat provided and, as a result, he forfeited the security deposit to offset this expense.

Although the Army initially determined that Mr. Delgado's lease-breaking expenses should be based on the rent due through April 9, the Army has now agreed that under the terms of the lease Mr. Delgado was entitled to be reimbursed for rent he was required to pay through April 30, 2006. The Army has disallowed his claim for reimbursement of the security deposit.

Discussion

Under certain circumstances, expenses incurred to settle an unexpired lease at the old duty station may be reimbursed in connection with a permanent change of station. The Federal Travel Regulation (FTR) and JTR both provide that expenses incurred by a transferred employee for settling an unexpired lease are reimbursable by the agency, so long as certain requirements are met. An employee who has incurred such expenses may be reimbursed if the terms of the lease or applicable laws provide for payment of settlement

expenses, the expenses cannot be avoided by sublease or other arrangement, and the employee has given appropriate notice of termination once he or she has definite knowledge of the transfer. 41 CFR 302-11.7, -11.431 (2006). A forfeited security deposit can be reimbursed as a lease-breaking expense, but only if all of these requirements are met. *See, e.g., Lorenzo Henderson*, CBCA 651-RELO, 07-1 BCA ¶ 33,539; *Samuel G. Baker*, GSBCA 15408-RELO, 01-1 BCA ¶ 31,276 (citing *Neil A. Friedman*, GSBCA 15313-RELO, 00-2 BCA ¶ 31,006 (security deposit not reimbursable when landlord should have returned deposit in accordance with lease); *Paul S. Sayah*, GSBCA 14356-RELO, 98-1 BCA ¶ 29,595 (security deposit not reimbursable when forfeiture could have been avoided); *Desmond A. Pridgen*, GSBCA 14121-RELO, 97-2 BCA ¶ 29,146 (security deposit reimbursable when forfeited in accordance with terms of lease)).

In addition to the general provision of the JTR cited above, the JTR references the Department of State Standardized Regulations (DSSR), with respect to reimbursement of expenses of breaking an unexpired lease in connection with a transfer of an employee stationed overseas. JTR provisions C1004 and C5300-D provide that the authority to reimburse an employee for lease penalty expenses incurred for early termination of a lease anywhere in the world pursuant to a transfer to or from an overseas location is set forth in the DSSR. DSSR 252.4 states as follows:

This [payment] is to help offset the expense of a lease penalty unavoidably incurred abroad by an employee receiving the living quarters allowance as a result of a transfer to the United States. The amount of the reimbursement shall not exceed the amount required by the specific terms of a rental contract signed by the employee as a prior condition of obtaining the lease for quarters abroad, or the equivalent of three months rent, whichever is less.

Like the comparable FTR and JTR provisions, the DSSR provision specifies in pertinent part that to be eligible for this payment, the employee must have promptly, after receipt of official notice of his transfer, informed the landlord of the need to vacate the premises prior to the expiration of the lease because of the pending transfer and, if possible, taken steps to avoid the penalty by sublease or assignment to others.

In this case, Mr. Delgado promptly notified the lessor of his transfer. It is not clear whether his lessor would have permitted a sublease; this subject was not addressed by either the claimant or the agency, although in his letter notifying the lessor of his transfer, claimant did offer to recommend the unit to other DoD employees stationed in Germany. In any event, both claimant and the agency now appear to agree that he should be reimbursed for rent he was required to pay from March 20, when he departed Germany, through April 30, the end of the third full month's notice required by the lease's notice provision. Although the Corps

conceded to this payment, it deducted amounts attributable to utilities, reasoning that the utilities were not required to be provided once Mr. Delgado had vacated the unit.

We are not persuaded that the agency's deduction of average utility payments from the rental payments due through April 30, 2006, was appropriate. This payment was required as an element of the rent under the lease. Even if the premises were vacated, some level of utilities would have to be maintained to avoid damage to pipes and other systems in the premises. The rental agreement did not provide that this amount would be abated in the event of early termination.

What remains in issue is the entitlement to the security deposit, which was not returned to Mr. Delgado. The rental agreement itself does not provide for forfeiture of the security deposit should the tenant terminate the lease early. On the contrary, it states that the deposit will be returned if the unit is in satisfactory condition when vacated and no debt is owed. Since the lease does not expressly provide for forfeiture of the security deposit as a penalty for early termination of the lease, the agency maintains that this is not an allowable expense. Based on the record developed at the Board, the agency's position is correct.

Mr. Delgado has made two arguments in support of his contention that the forfeited security deposit is an allowable lease-breaking expense in his circumstances. He contends that German law permits the landlord to keep the security deposit in the event a lease is terminated early. If this is so, and he is able to identify the specific provisions of German law that provide for this and show that it applies to his circumstances, then he may seek reconsideration of the agency's disallowance of this portion of his claim. Mr. Delgado also suggests that the deposit was withheld because of utility costs he may have owed above and beyond the monthly rental payment. If this is the case, this is not a lease-breaking expense justifying reimbursement by the agency, but an element of the rent owed by the tenant, which would be owed to the lessor regardless of the early termination of the lease. If the entire amount of the security deposit was not required to offset the higher cost of utilities provided in the winter months, Mr. Delgado should seek a partial refund of the deposit from the landlord.

Decision

The claim for reimbursement of the security deposit that was not returned to Mr. Delgado is denied based on the record before us. The agency should reimburse claimant for the rent, including utilities, owed through the end of April 2006.

CATHERINE B. HYATT
Board Judge