



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 29, 2007

CBCA 651-RELO

In the Matter of LORENZO HENDERSON

Lorenzo Henderson, Bryans Road, MD, Claimant.

Tammy S. Alphonse, Program Analyst/Authorized Certifying Officer, Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

SOMERS, Board Judge.

Under 31 U.S.C. § 3529 (2000), a disbursing or certifying official or agency head may request a decision from the Board regarding expenses incurred by a federal civilian employee for official travel and relocation expenses incident to a transfer of official duty station. The Board's response to the agency's request is referred to as an "advance decision." *Danny Dean Butrick*, CBCA 515-RELO (Mar. 19, 2007); *Andrew W. Frank*, GSBGA 16919-RELO, 06-2 BCA ¶ 33,364.

The Department of Agriculture (USDA) has asked the Board whether it can reimburse claimant for lease termination expenses of \$935 resulting from claimant's permanent change of station (PCS). For the reasons set forth below, we find that the claimant is not entitled to reimbursement.

Background

In August 2003, Lorenzo Henderson, an employee of USDA, entered into a lease agreement with CZS Development LLC in Morgantown, West Virginia, for the rental of an unfurnished apartment. Pursuant to the lease agreement, Mr. Henderson provided the landlord with a security deposit in the amount of \$695. The landlord agreed to return the security deposit to Mr. Henderson at the conclusion of the lease period provided that the leased premises had suffered no damage other than normal and reasonable wear and tear.

Specifically, the lease stated that the security deposit would not be returned until the tenant had accomplished, among other things, the following: (1) cleaned all walls and ceilings, painting any marks or stains; (2) professionally shampooed all carpets, and provided a receipt for verification; (3) scrubbed and waxed all floors; (4) cleaned all fixtures; and (5) cleaned the stove, refrigerator, and kitchen cabinets. The lease specified that the tenant would be charged for any services that the tenant failed to complete as required. In addition, an addendum to the agreement stated that the landlord would terminate the lease should the tenant be transferred. However, the tenant would be required to provide written notice thirty days prior to vacating the apartment, and the tenant's employer must submit a relocation letter to the landlord.

In the spring of 2005, Mr. Henderson transferred from Morgantown, West Virginia, to Washington, D.C., where he reported to his duty station on March 6, 2005. On May 5, 2005, Mr. Henderson submitted a claim for \$935 for lease termination expenses.

The USDA denied his request for reimbursement because the agency believed that the lease termination expenses represented maintenance fees, which are not reimbursable. By letter dated August 1, 2005, Mr. Henderson sought reconsideration of the denial of his claim. He contends that the amount sought is for breach of the lease agreement and not for "cleaning expenses."

Discussion

The Federal Travel Regulation provides that expenses incurred by a transferred employee for settling an unexpired lease are reimbursable by the agency, provided certain requirements are met. One requirement is that the employee must have actually incurred the expenses. A second requirement is that the terms of the lease or applicable laws provide for payment of the settlement expenses. Another requirement is that the expenses cannot be avoided. 41 C.F.R. 302-6.2(h) (2000). A security deposit can be reimbursed as a lease-breaking expense, but only if all of the regulation requirements are met. *See, e.g., Paul S. Sayah*, GSBICA 14356-RELO, 98-1 BCA ¶ 29,595.

Here, the documentation includes a bill from CZS Development, dated April 12, 2005, which details a list of deductions subtracted from the security deposit. The list contains the following expenses:

Painting:	\$365
Cleaning: eight hours	140
Carpet Cleaning	140

Maintenance: four hours	140
Damages: ¹	150
Total deductions:	\$935

Because the amount exceeded the security deposit of \$695, the landlord billed Mr. Henderson for an additional \$240. The record shows that the expenses billed were not unavoidable lease-breaking expenses. Rather, the claimant incurred the expenses because he failed to leave the apartment in an acceptable condition. The security deposit is not reimbursable when forfeiture could have been avoided. *See Samuel G. Baker*, GSBCA 15408-RELO, 01-1 BCA ¶ 31,276.

Decision

We affirm the agency's denial of Mr. Henderson's claim.

JERI KAYLENE SOMERS
Board Judge

¹ The damages are not specified on the bill.