Transfer

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

9579

FILE: B-193722 DATE: MAR 29 1979

MATTER OF: Clifton E. Wright, Jr. - Request for Reconsideration

[Request For Reconsideration of Claim For Damages to Property Leased to Government]

DIGEST:

1. Where property is leased by Government for family housing, reimbursement for restoration under terms of lease providing that Government will return property in same condition as at time it took possession, ordinary wear and tear excepted, is limited to amount found due by District Engineer, absent a preponderance of evidence to the contrary.

2. Initial and terminal inspection reports are sufficient to establish restoration required; lack of interim inspection is irrelevant with respect to establishing reasonable cost of restoration.

Sergeant Major Clifton E. Wright, Jr. requests reconsideration of a settlement issued by our Claims Division in which the Division allowed $878.83 of Sergeant Wright's claim for $5,419.98 for damages to his property leased to the Government. Sergeant Wright's claim represents his estimate of the cost of restoration necessary to place his house and grounds, leased to the Department of the Army under Lease No. AbC00020 DACA09-5-75-75, in the same condition as it was when the Army took possession on September 12, 1974. The claimant's property, consisting of a single family residence and the lot on which it is situated, located in San Diego, California, was leased by the Government for use as non-tactical family housing.

The lease period was from September 12, 1974, through September 15, 1975, to remain in force from year to year until September 11, 1984, at a monthly rental of $250 including utilities. By letter dated October 11, 1976, Sergeant Wright gave the Government 60 days written notice of lease termination, as permitted in paragraph 25 of the lease. The Government established December 15, 1976, as the effective termination date, and the claimant requested a joint terminal inspection of the premises, as restoration was required, pursuant to paragraph 19 of the lease.

Paragraph 19 provides that:

"The Government shall surrender possession of the premises upon the expiration or termination of this Lease, and if required by the Lessor, shall within 30 days thereafter, or within such additional time as may be mutually agreed upon,

> return the premises in as good condition as that existing at the time of entering upon the same under this lease, reasonable and ordinary wear and tear and damages by the elements or by circumstances over which the Government has no control, excepted; provided that, if the Lessor requires the return of the premises in such condition, the Lessor shall give written notice thereof to the Government at least 10 days before the expiration or termination of the lease; and provided further, that should the Lessor give such notice within the time specified above, the Government shall have the right and privilege of making a cash settlement with the Lessor in lieu of performance of its obligation, if any, to restore the real estate * * *."

A final joint inspection of the property disclosed diverse damage to the house and grounds. The claimant initially claimed restoration charges of $1,944.50. The Army District Engineer for the area estimated the reimbursable damage as $878.83. The claimant declined to accept settlement in this amount and requested reimbursement of restoration charges of $5,419.98. The claim was sent to the Office of the Chief of Engineers, Washington, D.C. Because of the disparity between the claimant's estimate and that of the Army District Engineer, the Chief of Engineers forwarded the entire claim to GAO for settlement as a doubtful claim under 31 U.S.C. 71 (1976). Our Claims Division issued settlement for $878.83. The claimant, in effect, requests reconsideration of this settlement.

Three of the largest cost items in Sergeant Wright's claim are based on the estimated cost of replacing carpeting allegedly damaged by stains and cigarette burns ($1,209.80), the estimated cost of removing and replacing a concrete patio allegedly damaged by staining due to the accumulation of petal droppings from an overhanging tree ($535), and the estimated cost of replacing the lawn and various trees, plants, flowers and shrubs allegedly missing, dead or damaged due to lack of watering and other neglect ($1,825.35).

The District Engineer determined that the carpet damage consisted of superficial burns, and also noted that on the initial joint survey and inspection report the claimant acknowledged that the carpeting had a remaining three-year life expectancy. The lease had been terminated after rental for a period of two years and three months. The District Engineer recommended allowance of $72.08 for cleaning and $75 for spot repair versus the $1,209.80 claimed for complete replacement.

Regarding the stained cement patio, the District Engineer recommended allowance of $50, based on an estimate for cleaning provided by a local nursery, rather than the $535 removal and replacement cost asserted by the claimant.

With respect to the lawn, trees, plants and shrubs, the District Engineer noted that many items claimed were still present, healthy and viable and that the estimated cost of certain of the missing plants was substantially overestimated. As a result, the allowance recommended by the Engineer for these items was $359.89, versus the claim of $1,825.35.

The other differentials between the claimants estimate and that of the District Engineer are similarly based on factual disputes involving either discrepancies in the extent of damage, the cost of repairs, or the kind and extent of repair necessary in order to restore items to original condition less ordinary wear and tear.

We have carefully considered the letters, statements, photographs, bills, estimates, and other material submitted by the claimant. However, on the basis of this material, in conjunction with the remainder of the record before us, we are unable to conclude that the claimant has established that his assessment of damages more accurately reflects the cost of the requisite restoration than does that recommended by the District Engineer.

Our Office has consistently held that where there is a factual dispute such as that involved in this case, we will accept the findings of fact of the administrative report absent a preponderance of evidence to the contrary. B-193101, March 12, 1979; 48 Comp. Gen. 638, 644 (1969). Based on the record before us the claimant has not provided evidence sufficient to meet this standard. Accordingly, the claimant has not met the burden of proof required to clearly and satisfactorily establish his claim. 31 Comp. Gen. 340, 341 (1952); Gene Peters, 56 Comp. Gen. 459, 466 (1977), 77-1 CPD 225.

Sergeant Wright has also alleged that the Army failed to conduct periodic inspections of the house during the pendency of the lease, on the date that a second tenant assumed occupancy, or on the anniversary of the lease, all of which the claimant asserts are required of the Army. We are not aware of any regulation requiring such inspection on the part of the Army. Moreover, as stated in Paragraph 19 of the lease, the relevant responsibility of the Army is to restore the property to the original condition, ordinary wear and tear excepted. This responsibility may be determined by comparing the initial and terminal inspection surveys, both of which were conducted in this case.

On the basis of the foregoing, the settlement of the Claims Division allowing the claim for $878.83, the amount recommended by the District Engineer and the Chief of Engineers, is sustained.

R.F.KELLER
Deputy Comptroller General
of the United States