DOCUMENT RESUME

08107 - [C3348439]

[Loss or Damage to Leased Property]. B-192230. November 27, 1978. 4 pp.

Decision re: William W. Stevenson; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel: General Government Matters.
Organization Concerned: Department of the Army.
Authority: 31 U.S.C. 71. 48 Comp. Gen. 289. 48 Comp. Gen. 290. 21 Comp. Gen. 90. 4 Comp. Gen. 211. 5 Comp. Gen. 526. 6 Comp. Gen. 215.

The claimant requested reconsideration of a claims settlement action by GAO. The landlord claimed damages over and above normal wear and tear in connection with apartments leased to Army for family housing purposes. The Army's findings as to which items claimed constituted normal wear and tear--and are therefore the lessor's responsibility--appeared reasonable and, absent clear showing that they are erroneous, must be upheld. (Author/SC)

DECISION

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

8439

FILE: B-192230 DATE: November 27, 1978

MATTER OF: William W. Stevenson - loss or damage to leased property

DIGEST: Landlord claimed damages over and above normal wear and tear in connection with apartments leased to Department of Army for family housing purposes. Claim included repainting, refinishing of floors, replacing of screens, and various other items. Army's findings as to which items constituted normal wear and tear--and are hence lessor's responsibility--appear reasonable and, absent clear showing that they were erroneous, must be upheld.

This decision is the result of a request by William W. Stevenson, Charlottesville, Virginia (claimant), for reconsideration of a settlement action by our Claims Division issued on March 31, 1978. Pertinent details are set forth below.

The record indicates that from August 13, 1963 to June 30, 1975, the claimant leased seven apartments to the Department of the Army to be used as family housing for those attending the Judge Advocate General's School in Charlottesville, Virginia. When the Army terminated the apartment leases on June 30, 1975, Mr. Stevenson met with representatives from the Corps of Engineers and the Army to inspect the premises. As a result of the inspection Mr. Stevenson claimed damages of $2,199.17 over and above the normal wear and tear incident to the use for which the apartments were leased, i.e., for family housing purposes.

In September 1976, Army offered the claimant $1,092.18. Claimant rejected the offer and, in April 1977, resubmitted his claim in the original amount. Pursuant to 31 U.S.C. § 71, Army then referred the claim to the General Accounting Office. After careful consideration of all material submitted by both claimant and the Army, our Claims Division concurred with the Army's determinations and, in March 1978, approved the claim in the amount of $1,092.18. Claimant has now requested reconsideration, arguing that the Government's actions were "arbitrary and unfair."

A comparison of the items claimed and allowed is set forth below:

	Amount claimed	Amount allowed
Soapstone damage	$ 143.06	$ 143.08
Interior doors	198.00	200.00
Glass	46.84	50.00
Patching of walls	-0-	40.00
Replace basins	170.00	170.00
Banister damage	78.00	78.00
Crisper tray	14.10	14.10
Exterior door	-0-	35.00
Screens	395.82	112.00
Window sills	312.00	190.00
Light fixtures	179.50	60.00
Paint	496.55	-0-
Floors	112.50	-0-
Reseeding of grass	25.00	-0-
Keys	27.80	-0-
Totals:	$2,199.17	$1,092.18

As the above table shows, a number of items were allowed in full, some allowed in part, and some disallowed. The total allowed was thus not an arbitrary figure but was based on an evaluation of each item claimed.

Under the specific terms of the various lease agreements, the lessor was required to "maintain the said premises and property in good repair and tenantable condition." This obligation "embraces acts of repair to prevent a decline in the condition of the premises." 48 Comp. Gen. 289, 290 (1968); 21 Comp. Gen. 90 (1941). Moreover, claims for damages or for restoration must be considered in light of the purpose for which the property was leased. The Government is not liable unless the damage is over and above normal wear and tear incident to the purpose for which the property was leased. 4 Comp. Gen. 211 (1924); 5 Comp. Gen. 526 (1926). The Army and our Claims Division evaluated the claim in light of these principles.

Army disallowed the claim for painting in its entirety, noting that, according to its investigation, the lessor had done

only a minimum amount of painting during the 12 years of the lease. Claimant disputes this, arguing that each apartment was painted every 3 years. Whether claimant did paint the apartments every 3 years and whether it is fair to call this a "minimum amount" are questions of fact which there is no need for us to resolve since in any event it has been consistently held that painting is an expense of maintenance included within the "good repair" provisions of the lease. 6 Comp. Gen. 215 (1926); 21 Comp. Gen. 90, supra; 48 Comp. Gen. 289, supra. Accordingly disallowance of this item was proper.

Claimant contends that damage to the screens was caused by the installation by tenants of window air conditioning units. Army determined that the useful life of screens was estimated at 15 years and that replacement after 12 years would indicate damage of 20 percent of replacement cost. The amount allowed was approximately 30 percent of the amount claimed.

The item for floors was denied because, according to the report of the Army Claims Officer, the floors "were never refinished during the entire leasing period and are past due considering normal finishing every ten years." The reseeding was disallowed as a normal wear and tear item. The item for keys was disallowed because, according to the Claims Officer's report, "In this type of property, re-keying after twelve years is considered a normal practice by owners and agents." The partial allowances for window sills and light fixtures were based on the physical inspection of the property. Army states that the inspection revealed minor damage to nine windows and more extensive damage to two, estimating the total damage at $190. With respect to the light fixtures, Army states that the inspection revealed six fixtures which needed replacing and that a local contractor estimated $10 per fixture, hence the allowance of $60.

It is clear from the foregoing that the original offer reflected an evaluation of each item and that the disallowances were based on specific reasons. We would be justified in overturning the Army's determinations only upon a showing that they were clearly erroneous or contrary to law. As indicated above, the principle of law involved is that the Government is liable only for damage over and above normal wear and tear. In view of the purpose for which the property was leased (family housing) and the duration of the leases (12 years), the Army's findings

do not appear unreasonable to us. Accordingly, we must conclude that we do not have sufficient basis to overturn those findings, and the settlement action of our Claims Division is hereby affirmed.

Deputy Comptroller General
of the United States