

DECISION

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

FILE: B-184901

DATE: JUL 23 1976

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MATTER OF:

**Robert H. Covell - relocation expenses -
unexpired lease**

DIGEST:

Employee is entitled to reimbursement for forfeited first month rental payment under paragraph 2-6.2h of the FTR for newly leased residence where employee has received less than 30 days notice of transfer to new permanent duty station and where transfer prevented employee from occupying residence since such expense was incurred in settlement of lease incident to change of duty station.

This action is in response to a request dated September 5, 1975, for an advance decision by an authorized certifying officer of the United States Department of Agriculture as to the propriety of certifying for payment the reclaim voucher in the amount of \$155 of Robert H. Covell of expenses incurred in settling an unexpired lease at the time of his transfer of permanent duty station.

The record shows that Mr. Covell was transferred from Milwaukee, Wisconsin, to Springfield, Missouri, on June 2, 1971, under the authority of Travel Authorization 1-R9-140. On May 4, 1971, he entered into a lease contract commencing June 1, 1971, for an apartment in Delafield, Wisconsin, to serve as his permanent residence at his then permanent duty station in Milwaukee. The issue presented is whether an employee may be reimbursed for the advanced payment of rent he forfeited when he was prevented from occupying the apartment by the transfer to a new duty station.

The lease provided, in pertinent part, as follows:

" * * * Notice by either owners or renters of termination of this Agreement must be made one full rental period monthly in advance of the proposed termination of the tenancy. If no notice of termination of the tenancy is given

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by either owners or renters, this Agreement shall stand without further action on the part of either party renewed upon the same terms and conditions for a like period of time."

The lease required a security deposit in addition to payment of the first month's rent. Mr. Covall paid the required first month rent by check dated May 20, 1971. Since Mr. Covall was not able to give the required one month's notice of termination, he forfeited his June 1971 rent under the terms of the lease.

Section 2 of Public Law 89-516, 5 U.S.C. § 5724a, and implementing regulations contained in Federal Travel Regulations (FTMR 101-7) (May 1973), provide the authority for reimbursing an employee for expenses incurred in relinquishing a former place of residence following transfer of official station. Paragraph 2-6.2h of the FTR provides for reimbursement of expenses incurred for settling an unexpired lease at an employee's old station incident to a change of duty station. It provides for reimbursement of such expenses when:

" * * * (1) applicable laws or the terms of the lease provide for payment of settlement expenses, (2) such expenses cannot be avoided by sublease or other arrangement, (3) the employee has not contributed to the expense by failing to give appropriate lease termination notice promptly after he has definite knowledge of the proposed transfer and (4) the broker's fees or advertising charges are not in excess of those customarily charged for comparable services in that locality. * * *"

In the instant case it is clear from the terms of the lease that the prepaid rent would be forfeited if the employee failed to give one month's notice of termination of the lease which under the circumstances was impossible to do. This arrangement of prepaid rent clearly constitutes a settlement expense which is reimbursable under FTR para. 2-6.2h.

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Sections 2-6.1c and d of the FTR provides in part as follows:

" * * * For an employee to be eligible for reimbursement of the costs of * * * terminating a lease at the old official station, the employee's interest in the property must have been acquired prior to the date the employee was first definitely informed of his transfer to the new official station.

"d. Occupancy requirements. The dwelling for which reimbursement of selling expenses is claimed was the employee's residence at the time he was first definitely informed by competent authority of his transfer to the new official station."

The literal language of section 2-6.1d of the FTR requiring that the dwelling at the old official station be the employee's actual residence at the time he was first definitely informed that he was to be transferred to a new official duty station would appear to preclude any reimbursement of lease forfeited expenses of an apartment not being used as residence. However, our view is that the regulation was not intended for application in a situation such as here, where the action of the agency in transferring the employee in its own interest has precluded the employee from establishing his residence in the leased apartment. See B-163546 dated March 8, 1968, in which we allowed reimbursement of a security deposit for rental of a residence never occupied by the employee (although used for storage of household goods) but where a lease had been executed. See also B-168818, February 9, 1970.

Accordingly, the voucher may be certified for payment in accordance with the foregoing.

R.F.KELLER

[Deputy] Comptroller General
of the United States