

DECISION

1-24895
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-208708**DATE:** April 15, 1983**MATTER OF:** Norman Mikalac

DIGEST: To settle lease which did not contain termination clause, transferred employee paid rent for unexpired 4-1/2 month term of lease. Employee is entitled to full amount of lease settlement expenses paid in avoidance of potentially greater liability. Reimbursement is not diminished by agency's finding that it is customary for landlord to refund rent when he has relet premises during unexpired term of lease since reimbursement is governed by terms of lease and not what is customary in locality.

By letter of July 21, 1982, an authorized certifying officer with the Defense Logistics Agency requested an advance decision on the reclaim of Mr. Norman Mikalac for a month's rent paid in connection with the settlement of an unexpired lease. The request was forwarded through the Per Diem, Travel and Transportation Allowance Committee and assigned PDTATAC Control No. 82-20. The employee's payment of rent for the 4-1/2 month period of the unexpired lease term was in settlement of a potentially greater liability under the terms of that document. For this reason and because neither state law nor the terms of the lease obligated the landlord to relet the premises and hold any rent received for the account of the former tenant, the employee is entitled to the full amount of the settlement, notwithstanding the fact that the former landlord relet the premises for the last month of the lease term.

By Travel Order No. TGB 81-C-0831, dated July 16, 1981, Mr. Mikalac was transferred from Philadelphia, Pennsylvania, to a position with the Defense Logistics Agency in Baltimore, Maryland. At the time he was notified of his transfer Mr. Mikalac was residing in a house he had rented under a 1-year lease which expired December 31, 1981. The lease contained no termination clause and did not permit subletting without approval by the landlord.

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The record indicates that when Mr. Mikalac was notified of his transfer, he contacted his landlord and offered to settle his liability under the lease by paying rent through the end of October 1981. On July 22, 1981, he received a letter from the owner's attorney advising that he was obligated under the terms of the lease to pay the full monthly rental amount for the unexpired period of the lease through December 1981. That letter stated in part:

"Your failure to completely satisfy my client with regard to your full obligation under the terms of above lease and the expenditures detailed below will ensure that the following actions are taken: (1) The pursuit by my client of all available legal remedies to which he is entitled; (2) The confiscation by my client of the \$500 security deposit held under the above lease; (3) An unsatisfactory reference by my client to your prospective landlord."

Attached to the letter was an itemized list of expenses the lessor would incur as a result of the termination totaling \$2,251.50. Mr. Mikalac ultimately agreed to pay the rent for the remainder of his lease (4-1/2 months). His security deposit of \$500 was returned and the lessor did not pursue his claim for additional damages.

When Mr. Mikalac filed his voucher on September 28, 1981, he claimed \$1,798 for the cost of terminating his lease. The agency disallowed \$395, an amount equal to the final month's rent, upon learning that the landlord had relet the house in December 1981. Based on its determination that a tenant would ordinarily be entitled to a return of forfeited rent where the landlord relet the premises during the unexpired term of the lease, the agency found that the \$395 amount in question was not a customary or reasonable expense of settlement. Although Mr. Mikalac was advised to recover the \$395 from his former landlord, the landlord's attorney has informed the agency that the parties' agreement constituted a complete settlement of their obligations under the lease and that the employee is not entitled to return of the 1-month's rent in issue.

The criteria to be applied to determine whether Mr. Mikalac is entitled to reimbursement for the full amount of the expenses incurred in settling his unexpired lease are set forth in paragraph C14003 of Volume II, Joint Travel Regulations (JTR), which provides:

"Expenses incurred for settling an unexpired lease (including month-to-month rental) on residence quarters occupied by the employee at the old duty station may include broker's fees for obtaining a sublease or charges for advertising an unexpired lease. Such expenses are reimbursable when:

- "1. applicable laws or the terms of the lease provide for payment of settlement expenses,
- "2. such expenses cannot be avoided by subleasing 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,
- "4. the broker's fees or advertising charges are not in excess of those customarily charged for comparable services in that locality.

"Itemization of these expenses is required, the total amount of which will be entered in the travel voucher. The voucher may be submitted separately or with a claim that is to be made for expenses incident to the purchase of a dwelling. Each item must be supported by documentation showing that the expense was, in fact, incurred and paid by the employee."

Mr. Mikalac's lease did not contain a specific provision for payment of liquidated damages in the event of early termination. We have held, however, that the first condition for reimbursement (contained in item 1)

is not to be interpreted as requiring such a provision and in the absence of such provision, have allowed reimbursement where the employee entered into a reasonable settlement of his obligations under the terms of that lease. Matter of Jason, B-186035, November 2, 1976. Similarly, since the lease did not contain a notice provision, item 3 is not in issue and Mr. Mikalac has not claimed brokerage or advertising expenses which are the subject of item 4. With regard to item 2, the terms of the lease specifically prohibited subletting. Under Pennsylvania law a landlord has no clear duty to mitigate damages when there has been a premature termination of a lease. Ralph v. Deiley, 141 A. 640 (1928); 21 A.L.R.3d 534 (1968); Cusamano v. Anthony M. DiLucia, Inc., 421 A.2d 1120, 1125 n.9 (1980).

Under the terms of Mr. Mikalac's lease, the landlord had the option of insisting upon rent for the unexpired balance of the term of the lease, together with other costs and expenses, upon the tenant's failure to pay rent or upon his abandonment of the premises. Like Pennsylvania law, the lease imposed no clear duty upon the landlord to relet the premises in an effort to reduce the former tenant's liability. In this case, the record indicates that Mr. Mikalac offered to settle his outstanding liability by payment of rent through October 1981. His offer was summarily rejected, and he was advised that his landlord would settle for no less than payment of rent for the unexpired term of the lease and that he faced even greater liability should he be unwilling to meet those terms.

Since Mr. Mikalac attempted to reduce his liability and since the payment is no more than is required by the terms of the lease in the event of the tenant's premature termination, Mr. Mikalac is entitled to reimbursement for the \$1,798 amount he had claimed as a lease settlement expense. Under the regulations, his entitlement is not diminished by the fact that it may not be customary for the landlord to insist upon or retain rent for the unexpired term of the lease where he has successfully relet the premises before the end of that term. Reimbursement for lease settlement expenses is governed by the actual terms of the lease and the requirement that the employee make a reasonable effort to settle his obligation thereunder. Under the regulations only broker's fees and advertising charges

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for the purpose of settling a lease are limited to those customarily charged in the locality.

J. A. Barclay
Comptroller General
of the United States