



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 9, 2013

CBCA 3194-RELO

In the Matter of TERRANCE F. MANN

Terrance F. Mann, Alexandria, VA, Claimant.

Sheila Melton, Director, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

McCANN, Board Judge.

The Department of the Army (Army) refused to reimburse claimant for a lease termination fee of \$1200 (or one month's rent) because claimant did not provide thirty-days' written notice to his landlord prior to vacating, as required by his lease. Claimant seeks reimbursement on the ground that he did not contribute to the incurrence of this expense because he was given such a short time (less than fifteen hours) in which to provide written notice to the landlord that he was vacating the premises. We deny the claim because the record does not demonstrate that the claimant reasonably incurred the lease termination fee.

Background

Claimant, Terrance F. Mann, was transferred by the Army under permanent change of station (PCS) orders from Fort Knox, Kentucky, to Alexandria, Virginia. On July 4, 2011, claimant entered into a lease agreement for a residence in Elizabethtown, Kentucky. His twelve-month lease ran from August 1, 2011, to July 31, 2012, at \$1200 per month. The lease's security deposit agreement specified that the \$1200 security deposit could be withheld if claimant's notice of intent to vacate was not given, in writing, one full calendar month prior to vacating the property.

Claimant's PCS orders were issued on May 21, 2012, with a reporting date of September 30, 2012. The record indicates that he received notification of the issuance of the orders, by email message dated Thursday, May 31, 2012, at 9:17 a.m. Claimant provided notice of his intent to vacate by June 30, 2012, to his landlord the following Monday, June 4, 2012. His landlord charged him \$1200 (one month's rent) because he breached his lease's security deposit agreement, which required thirty-days' notice prior to vacating his apartment.

The Defense Finance and Accounting Service (DFAS) denied claimant's request for reimbursement of the \$1200 as not allowable under the Joint Travel Regulations (JTR). DFAS found that claimant "failed to provide appropriate lease termination notice promptly after being officially notified of the date of transfer."

Claimant contends that it was necessary for him to vacate prior to July 1, 2012, in order to avoid unspecified additional costs (both to him and to the Government). He further contends that, because of his scheduled temporary duty travel during the months of July and August, the travel office would not have been able to schedule movers during a time when he would be present.

Discussion

When an agency transfers an employee from one permanent duty station to another, the JTR authorizes the agency to reimburse the employee for relocation expenses. Specifically, the agency may reimburse employees for expenses incurred in settling an unexpired lease on a residence occupied by an employee at the old permanent duty station, provided certain conditions are met. The JTR provides,

A. Allowable Expenses. Expenses (including broker's fees for obtaining a sublease or charges for advertising an unexpired lease) incurred for settling an unexpired lease (including month-to-month rental) on a residence occupied by an employee at the old PDS are reimbursable when:

....

3. The employee has not contributed to the expense (e.g., by failing to give appropriate lease termination notice promptly after the employee is officially notified of the date of transfer.

JTR C5762.

Similarly, the Federal Travel Regulation (FTR) provides that an agency may pay lease-breaking expenses if the employee has “not contributed to the expenses by failing to give appropriate lease termination notice promptly after you have definite knowledge of your transfer.” 41 CFR 302-11.7 (2011); *see, Linda S. Hall, CBCA 2703-RELO, 12-1 BCA ¶ 35,011.*

There is no evidence in the record that claimant received his orders or notice of his orders prior to receiving an email message sent at 9:17 a.m., May 31, 2012. In any event, the record does not indicate when he actually read the message. Claimant had less than fifteen hours to provide written notice to his landlord to avoid forfeiting the \$1200 deposit for the month of July.

Claimant, however, had the entire months of June and July to arrange his move with the transportation office. Claimant’s contention that the transportation office and he would not have been able to arrange for a time for movers to come during the months of July and August is unsupported. His contention that vacating his residence prior to July 1, 2012, actually saved both him and the Government money is also unsupported. We find that claimant did contribute to the lease termination expense, and may not be compensated under the JTR and the FTR.

Decision

The claim for unexpired lease cost reimbursement is denied.

R. ANTHONY McCANN
Board Judge