

DECISION



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

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FILE: B-192135

DATE: January 24, 1979

MATTER OF: Vincent J. Delguercio

DIGEST: Claimant was offered and accepted a position as an Aerospace Engineer with NASA, Houston, Texas, causing him to be transferred from New Jersey. As a result of his transfer, ^{it was necessary for the claimant to break} claimant broke his lease in New Jersey, a consequence of ^{causing} which was the forfeiture of his security deposit and the interest accumulated thereon ^{that secured} ~~securing the~~ settlement of his unexpired lease. Claimant may be reimbursed for the loss of his security deposit and the interest accumulated thereon pursuant to ^{Federal Trans. Reg.} paragraph 2-2.6h of the FTR.

This action is in response to a request for an advance decision from Mr. Charles B. Mormon, Authorized Certifying Officer, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration (NASA) regarding a voucher submitted by Mr. Vincent J. Delguercio of that center requesting reimbursement of \$318.42 representing forfeiture of security deposit plus accumulated interest.

On May 28, 1976, Mr. Delguercio entered into a lease for an apartment with Pennant Club Inc., for a term of 1 year beginning June 1, 1976. Under the terms of the lease, Mr. Delguercio deposited with the landlord the sum of \$300 to act as a security deposit. The following year Mr. Delguercio renewed his lease for a term of 12 months. Under this new lease the security deposit remained the same. During the term of the renewed lease Mr. Delguercio accepted a position with the NASA Johnson Space Center, Houston, Texas, as an Aerospace Engineer. The transfer was subsequently completed under Travel Authorization No. X45892, dated December 20, 1977.

As a result of the transfer Mr. Delguercio could not comply with the terms of his lease agreement. On December 28, 1977, and January 25, 1978, Mr. Delguercio was advised by Pennant Club Apartments that due to the fact he broke the lease the security deposit and the interest accumulated thereon were going to be applied against the balance owed on the lease. The forfeiture of the security deposit and the interest secured settlement of the unexpired lease.

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Reimbursement to Federal employees of certain expenses incurred in connection with the settlement of unexpired leases incident to a transfer of duty station is governed by section 5724(4) of title 5, United States Code.

By Executive Order No. 11609, July 22, 1971, the Presidential authority to issue regulations under 5 U.S.C. 5724a was delegated to the General Services Administration (GSA). Pursuant to this authority, the GSA promulgated paragraph 2-6.2h of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973) which governs expenses incurred for settlement of unexpired leases. The above regulation provides for reimbursement of expenses incurred in the settling of an unexpired lease on residence quarters occupied by the employee at the old duty station 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 transfer * * *"

Under the applicable terms of the lease, the landlord, in case of a breach or default of the lease by the Tenant, had the right to retain the security deposit for the payment of rent to which the Tenant was in default or for the reimbursement for any sum which may have been expended by reason of the Tenant's breach or default.

Based upon the terms of the lease there was nothing Mr. Delguercio could have done in order to obtain refund of his security deposit when he was transferred prior to the expiration of his lease. Therefore, pursuant to paragraph 2-6.2h of the FTR, Mr. Delguercio is entitled to reimbursement of his security deposit. Although no mention is made in the lease concerning the accumulation of interest on the security deposit, it is clear that interest did accrue and would have been paid to Mr. Delguercio together with the principle amount had he fulfilled the terms of the lease. Thus, the withholding of interest on the security deposit represents a loss to the claimant resulting from the breach of the lease agreement. In the circumstances this amount may be included in the reimbursement allowed under 5 U.S.C. 5724a(4), and the implementing regulations.

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Accordingly, the voucher is returned and may be certified for payment if otherwise correct.

R. J. Kellan
Deputy Comptroller General
of the United States