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DECISION



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

FILE: B-181435

DATE: FEB 12 1975

MATTER OF: **Waldean D. Asheim - Reimbursement for settlement
of unexpired lease incident to change of station.**

DIGEST: Employee is entitled to reimbursement for expenses incurred for repairs to leased property under subsection 2-6.2h of FPMR 101-7, May 1973, where lease provided for addition of value of such repairs to prepaid rent since such expenses were incurred in settlement of lease incident to change of station.

This action is a request for an advance decision by a certifying officer concerning the claim of Mr. Waldean D. Asheim, an employee of the Department of Agriculture, Farmers Home Administration, at Timber Lake, South Dakota, for reimbursement for the cost of settling an unexpired lease incident to a change of official station.

The facts as reported disclose that on July 7, 1973, Mr. Asheim entered into a lease for rental of a house in Bison, South Dakota. The lease provided, in pertinent part, as follows:

"AS OF JUNE 1, 1973, THE TENANT HAS AN INVESTMENT OF \$1,600.00 IN PREPAID RENT. THIS INVESTMENT WILL HEREAFTER BE CHARGED OFF AT A RATE OF \$60.00 A MONTH. THE TENANT AGREES TO MAINTAIN THE HOUSE AND YARDS IN REASONABLY GOOD CONDITION. ANY FURTHER REPAIRS TO THE PROPERTY WILL BE AGREED TO IN WRITING, ATTACHED TO THIS LEASE, AND THE TOTAL AMOUNT FOR THE REPAIRS ADDED TO THE \$1,600.00 MENTIONED ABOVE.

"IF THE LANDLORD MUST ASK THE TENANT TO VACATE THE PROPERTY FOR REASONS OTHER THAN VIOLATION OF THIS LEASE, THE LANDLORD SHALL REIMBURSE THE TENANT FOR ANY UNUSED PORTION OF THE RENT. IF THE TENANT VACATES THE PROPERTY, THE PREPAID RENT WILL BE FORFEITED TO THE LANDLORD."

Mr. Asheim made the required investment of \$1,600 in prepaid rent upon entering the lease. On October 9, 1973, and January 14, 1974, he paid for additional repairs consisting of \$492 for a pump for a well and services incident thereto, and \$35 for a pump for a

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septic tank. The record shows that on March 14, 1974, Mr. Asheim was officially notified that he would be transferred from Bison to Timber Lake, South Dakota, effective March 31, 1974. At the time of transfer, there was \$1,587 in prepaid rent, including the value of the repairs. The primary issue for consideration in this case is whether the claimant is entitled to reimbursement for rent forfeited which was prepaid through expenses incurred by him incident to repairs to the leased property.

Section 2 of Public Law 89-516, 5 U.S.C. 5724a, and implementing regulations contained in Federal Property Management Regulations (FPMR) 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. Subsection 2-6.2h of FPMR 101-7, May 1973, provides for reimbursement for the cost of settling an unexpired lease at an employee's old station incident to a change of 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 intent of the parties was to permit the claimant to make certain improvements to the property in lieu of rent. It thus appears that the claimant was to be credited for additional prepaid rent in the amount of the cost for installation of the pumps for the well and septic tank. However the terms of the lease provided that all prepaid rent should be forfeited if the claimant vacated the premises for any reason (other than upon the request of the landlord). This arrangement of prepaid rent clearly constitutes a settlement expense which is reimbursable under FPMR 2-6.2h.

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Accordingly, the voucher, if otherwise correct, may be certified for payment in the entire amount of \$1,587 claimed.

Henry

**Comptroller General
of the United States**