



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

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JUN 6 1973

Mr. Hobby L. Furr
Authorized Certifying Officer
Office of Budget and Accounts
Administrative Division
United States Department of Justice

Dear Mr. Furr:

We refer further to your letter of April 9, 1973, which transmitted for advance decision a voucher in behalf of Mr. Fred T. Bennett in the amount of \$235 as [reimbursement for loss of security deposit] incident to a change of duty station.

The subject voucher is stated to be a supplement to Mr. Bennett's voucher for moving expenses related to his change in duty station from Boston, Massachusetts, to New Orleans, Louisiana. It appears that at the time of transfer Mr. Bennett occupied an apartment under lease at his old duty station. Section 31 of the lease provides for a security deposit of \$235. Section 31B of the lease provides as follows:

The Lessor shall return the amount of the security deposit to the Lessee within 10 days after the termination of this lease or upon the Lessor's vacating the said premises completely together with all his goods and possessions, whichever shall last occur; provided:

- 1) there is no damage to the leased premises; and
- 2) there are no breaches of any of the terms, covenants and conditions of the lease; and
- 3) there has been no breach or termination which may give rise to a cause of action under the indemnity provision of this lease; and
- 4) the Lessee is not otherwise indebted to the Lessor.

A special provision of the lease provides:

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If Lessee provides proof that his employment has been transferred 50 or more miles from Boston, this lease can be terminated provided Lessor is given 30 days written notice. Security will be returned but cost of any redecorating will be deducted from said security.

Mr. Bennett claims that he complied fully with the notice requirements of the lease and that the \$235 security deposit should have been returned to him. However, it appears that a legal problem exists between the landlord and a third party and the landlord's funds have been attached pending resolution of the litigation involved. In the circumstances Mr. Bennett claims reimbursement of the \$235.

Reimbursement of lease settlement expenses as authorized by 5 U.S.C. 5724a(a)(4) is governed by regulations in section 4 of Office of Management and Budget Circular No. A-56, revised August 17, 1971. The specific provision which identifies expenses which may be reimbursed, as contained in section 4.2h, is as follows:

h. Settlement of an unexpired lease. Expenses incurred for settling an unexpired lease (including month-to-month rental) on residence quarters occupied by the employee at the old official 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 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. Itemization of these expenses is required and the total amount will be entered on an appropriate travel voucher. This 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.

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The data submitted shows that Mr. Bennett may still receive refund of the security deposit once the litigation is completed. Additionally, in view of the specific terms of the lease providing for refund and Mr. Bennett's compliance therewith, we cannot say that the security deposit has been forfeited for expenses incurred due to cancellation of the lease.

Accordingly, the voucher which is returned herewith may not be certified for payment.

Sincerely yours,

PAUL G. DEARLING

For the
**Comptroller General
of the United States**