



INTERIOR BOARD OF INDIAN APPEALS

L. J. Cooper v. Acting Southern Plains Regional Director,  
Bureau of Indian Affairs

41 IBIA 58 (05/13/2005)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ARLINGTON, VA 22203

L. J. COOPER,	:	Order Affirming Decision
Appellant,	:	
	:	
v.	:	
	:	Docket No. IBIA 04-24-A
ACTING SOUTHERN PLAINS REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	May 13, 2005

L. J. Cooper (Appellant) appeals from an October 21, 2003, decision of the Acting Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning the cancellation of Farming and Grazing Lease No. 0-09750-03-07 (the lease) for Otoe Allotment No. 392. For the reasons discussed below, the Board affirms the Regional Director's decision.

The lease was executed by Appellant on May 13, 2002, and approved by the Superintendent, Pawnee Agency, BIA (Superintendent), on June 12, 2002. It had a term of five years, beginning January 1, 2003. The annual rent was \$2611.00, with payment due on January 1 of each year.

Appellant failed to pay her first year's rent by January 1, 2003. On January 13, 2003, the Superintendent notified her that she was in violation of the lease at issue here, as well as another lease on which the rent had not been paid. The Superintendent stated:

[Y]ou have ten business days from receipt of this letter to (1) cure this violation and notify us in writing that the violation has been cured, (2) dispute our determination that a violation has occurred and/or explain why we should not cancel this lease, or (3) request additional time to cure the violation. Therefore, please remit a Cashier's Check or U.S. Postal Money order \* \* \* within 10 business days of receipt of this letter.

According to the Regional Director's decision, Appellant's husband called the Agency on January 31, 2003, 1/ stating that the rent for both leases would be paid on February 3, 2003. When the rent had not been paid by February 6, 2003, the Superintendent cancelled both leases. On February 14, 2003, Appellant paid the rent for the other lease 2/ and stated in a letter of that date: "I am hereby requesting additional time to pay the rental on Contract # 0-09750-03-07."

On March 10, 2003, the Superintendent wrote to Appellant, stating: "You notified the Pawnee Agency by letter on February 14, 2003, that you were requesting extra time to pay [the lease rent]. Since no payment has been made, nor have you notified the Agency of a payment date, your lease is hereby cancelled and payment demand will be made of your surety."

By letter dated April 25, 2003, 3/ Appellant appealed the Superintendent's decision to the Regional Director, who affirmed it on October 21, 2003. Appellant then appealed to the Board. She filed an opening brief and the Regional Director filed an answer brief. 4/

With respect to the merits of this dispute, Appellant argues:

1. Pawnee Agency staff did not respond in any way to my correspondence dated February 14, 2003, wherein I requested more time to pay the lease [rent] which is the subject of this action. My request was submitted in accordance with pertinent regulations.

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1/ There is no contemporaneous documentation of this contact in the record. However, no party disputes that the contact was made.

2/ BIA evidently reinstated the other lease.

3/ The record includes several copies of another letter from Appellant dated Apr. 25, 2003, which requests action under 25 C.F.R. § 2.8, "Appeal from inaction of [a BIA] official." The letter is addressed to Trust Management Services, Pawnee Agency, and seeks a written response to Appellant's Feb. 14, 2003, request for additional time to pay rent.

All of the record copies of this letter appear as attachments to letters written to BIA officials by members of Congress. Thus it is not clear whether Appellant ever sent the letter directly to BIA.

4/ The Superintendent and the Regional Director sought to require Appellant to post an appeal bond. Appellant objected to the request. The Board should have acted on the request and regrets its failure to do so. However, this decision renders the appeal bond request moot.

2. According to [25 C.F.R. §] 2.8, Agency staff are obligated to respond within an appropriate timeframe.

3. In the absence of a response to my request for more time, and not knowing that payment would not be accepted, I drove to the offices of the Pawnee Agency to hand-deliver my certified check to pay the lease [rent].

4. To my surprise, my payment was summarily rejected. No explanation was given for the refusal to accept payment. No recourse was offered, nor was any other direction given to me.

Appellant's Opening Brief at 1.

As far as the record shows, neither Appellant nor BIA made any attempt to contact the other party between February 14, 2003, when Appellant requested more time to pay her rent, and March 10, 2003, when the Superintendent cancelled the lease. Plainly there was a difference of opinion as to whose responsibility it was to make contact. The Superintendent considered it Appellant's responsibility to inform BIA of the date she would be able to make payment. Appellant argues that it was BIA's responsibility to contact her.

When Appellant failed to specify a payment date in her February 14, 2003, letter, BIA arguably should have demanded a more specific statement from her as to when she would pay her delinquent rent. However, whatever responsibility BIA had in that regard derived from its duty toward the Indian landowners, not its duty toward Appellant. Cf. Burrell v. Acting Albuquerque Area Director, 35 IBIA 56, 58 (2000) (BIA has a trust duty toward Indian landowners, but not toward a lessee of Indian land). As a delinquent lessee seeking to retain her lease, Appellant bore the responsibility either to pay her rent or to inform BIA of the date on which she proposed to make payment, so that BIA could determine what course of action to pursue. The Board concludes that, even if BIA erred in failing to demand a specific payment date from Appellant, that error did not excuse her failure either to pay her delinquent rent or to provide a payment date.

Appellant's request for action under 25 C.F.R. § 2.8, even assuming it was actually filed with BIA (see footnote 3, above), was not made until April 25, 2003, long after her lease was cancelled. Plainly, Appellant's April 25, 2003, request under sec. 2.8 did not render BIA's March 10, 2003, lease cancellation erroneous.

Appellant contends that she attempted to make payment but was rebuffed. However, she does not state when the purported attempt was made. Thus, it is not clear whether it was made before or after the lease was cancelled. To the extent Appellant may be contending that she made the attempt before cancellation and that the Superintendent should not have proceeded with the cancellation, she has failed to support her contention in that she does not even suggest that she made the attempt prior to cancellation, let alone provide any evidence of the

attempt. 5/ To the extent she may be contending that she was entitled to reinstatement of her lease following a post-cancellation payment attempt, she has failed entirely to support such a contention.

In her remaining arguments, Appellant objects to the Superintendent's appeal bond request, contends that this appeal should be settled, and suggests that, because of this appeal, the landowners may be deprived of rent for one or more years.

As noted above, no appeal bond has been imposed in this appeal.

Appellant herself thwarted any settlement of this appeal when she failed to respond to an order from the Board concerning alternative dispute resolution.

Appellant's expressed concern about the landowners' receipt of rent suggests that she believes she is not required to pay rent during the pendency of this appeal. The regulations clearly provide otherwise. Under 25 C.F.R. § 162.254, a lessee is required to pay rent while a cancellation decision remains ineffective, as it does while an appeal is pending. If Appellant has failed to pay rent during the pendency of this appeal, BIA may, and should, take enforcement action against her in accordance with 25 C.F.R. § 162.248, which provides:

(a) A tenant's failure to pay rent in the time and manner required by an agricultural lease will be a violation of the lease, and a notice of violation will be issued under § 162.251 of this subpart. \* \* \*

(b) If a tenant fails to provide adequate proof of payment or cure the violation within the requisite time period described in § 162.251(b) of this subpart, and the amount due is not in dispute, we may immediately take action to recover the amount of the unpaid rent and any associated interest charges or late payment penalties. We may also cancel the lease under § 162.252 of this subpart, or invoke any other remedies available under the lease or applicable law, including collection on any available bond or referral of the debt to the Department of the Treasury for collection. An action to recover any unpaid amounts will not be conditioned on the prior cancellation of the lease or any further notice to the tenant, nor will such an action be precluded by a prior cancellation.

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5/ No evidence of the purported attempt appears in the administrative record.

The Board concludes that Appellant has failed to show error in the Regional Director's decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's October 21, 2003, decision is affirmed.

I concur:

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// original signed  
Anita Vogt  
Senior Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge