

Does PCS Cover ETS Under the SCRA?

Administrative & Civil Law

Legal Assistance judge advocates may encounter a scenario in which landlords refuse to allow a Soldier to terminate a lease due to an expiration of term of service (ETS). Although such a case may seem unthinkable at first, a careful reading of § 535 of the Servicemembers Civil Relief Act (SCRA)¹ will find terms such as ETS and retirement noticeably absent from the text of the statute. Recent case developments provide attorneys with new ammunition to fight early termination fees levied against Soldiers trying to break a lease when leaving the service.

On 8 March 2012, the U.S. District Court for the District of Nebraska entered a consent order finding Empirian Property Management, Inc. in violation of § 535(a)(1) of the Servicemembers Civil Relief Act (SCRA).² Under Section 535(a)(1), servicemembers may terminate residential leases upon receipt of “military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.”³ At issue in *Empirian* was interpretation of the term “permanent change of station” (PCS) orders.⁴ The Defendant, Empirian Property Management, argued that orders permanently releasing servicemembers from military service (e.g., expiration of term of service (ETS), discharge, or retirement orders) were not within the meaning of “permanent change of station” orders found in § 535(a)(1).⁵ The Department of Justice, and ultimately the court, disagreed.⁶

The SCRA defines military orders as “official military orders, or any notification, certification, or verification from the servicemember’s commanding officer, with respect to the servicemember’s current or

future military duty status.”⁷ Further, the Army defines PCS as “the assignment, detail, or transfer of a Soldier to a different permanent duty station (PDS) under a competent travel authorization that does not specify the duty as temporary, provide for further assignment to a new PDS, or direct return to the old PDS.”⁸ Finally, the Joint Travel Regulation (JTR) connects these two terms by placing travel benefits associated with a servicemember’s “discharge, resignation, or separation from the Service under honorable conditions” under the auspices of PCS travel.⁹

The court in *Empirian* reviewed the definitions of military orders and PCS and the general intent of § 535(a)(1) to find the Defendant had wrongfully withheld security deposits from servicemembers who had properly terminated their leases under the SCRA.¹⁰ The court relied upon the language found in the JTR when it enjoined the Defendant from refusing to terminate leases when given a proper notice of termination accompanied by “a copy of the servicemember’s military orders for PCS, including PCS orders discharging, releasing, or separating that servicemember from military service under honorable conditions.”¹¹ Therefore, the court clearly recognized that orders discharging servicemembers for the military service are encompassed by the term “PCS orders” found in § 535(a)(1) of the SCRA.

Interestingly, many state statutes now explicitly allow servicemembers to prematurely break a lease due to an ETS, without incurring an early termination fee from the landlord.¹² These laws are instructive for two reasons. First, legal assistance attorneys should consider looking to state law, in addition to the

¹ 50 U.S.C. § 535 (2012).

² See Consent Order, *United States v. Empirian Property Management, Inc.*, No. 8:12CV87 (D. Neb. Mar. 8, 2012).

³ 50 U.S.C. § 535(a)(1) (2012).

⁴ See *Empirian Property Management*, *supra* note 2, at 2.

⁵ *Id.*

⁶ *Id.* See generally, Patrick Clary, *Let ‘em go, Landlord – SCRA, Residential Leases, and PCS*, (Nov. 12), http://www.americanbar.org/content/dam/aba/events/legal_assistance_military_personnel/ls_lamp_cle_nov12_top_5_landlord_skra_residential_leases_pcs.authcheckdam.pdf.

⁷ § 535(i)(1).

⁸ U.S. DEP’T OF ARMY, REG 614-200, ENLISTED ASSIGNMENTS AND UTILIZATION MANAGEMENT, § II (26 Feb. 2009) (RAR 11 Oct. 2011)..

⁹ U.S. DEP’T OF DEF., JOINT TRAVEL REGULATIONS, app. A1 (1 Mar. 15).

¹⁰ See *Empirian Property Management*, *supra* note 2, at 10.

¹¹ *Id.*

¹² For example, Virginia provides that any member of the armed forces of the United States . . . (iii) is discharged or released from active duty with the armed forces of the United States or from his full-time duty or technician status with the National Guard[.] VA. CODE ANN. § 55-248.21:1 (2007).

SCRA¹³, when facing issues related to an ETS, or to an involuntary separation.¹⁴ By doing so, legal assistance attorneys may discover that the state legislature has already resolved any ambiguity in favor of their client, without needing to tread into vagueness of the SCRA for this issue. Second, Congress should consider amending § 535(a)(1) to align with the court in *Empirian* and more closely resemble the state statutes that have already affirmatively addressed this issue.

The Justice Department issued a press release following its settlement with Empirian Property Management.¹⁵ In this release, the Assistant U.S. Attorney for the District of Nebraska, Deborah R. Gilg, stated, “This settlement sends a strong message that the rights of our service personnel will be protected. No service man or woman engaged in protecting all of us from harm should suffer financial damage from landlords who seek to thwart the protection our laws afford our service personnel.”¹⁶ Legal assistance attorneys can employ the *Empirian* case with relevant state statutes to build a foundation upon which to make strong arguments for Soldiers facing early termination fees due to an ETS, retirement, or early discharge.

—MAJ T. Scott Randall and MAJ Jonathan E. Fields

¹³ FLA. STAT. § 83.682 (2014). Termination of rental agreement by a service member. This statute from Florida is just one example of a state’s own version of the Servicemembers Civil Relief Act. Legal Assistance Attorneys should not forget these state laws when advocating for their clients, and should add any such applicable state law to their internal office’s standing operating procedure (SOP).

¹⁴ N.C. GEN. STAT. §§ 42-45 (2012). (a) Any member of the Armed Forces of the United States who . . . (ii) is prematurely or involuntarily discharged or released from active duty with the Armed Forces of the United States, may terminate the member’s rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord’s receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member’s commanding officer.

¹⁵ See DEP’T OF JUSTICE, <http://www.justice.gov/opa/pr/justice-department-settles-landlord-tenant-case-under-servicemembers-civil-relief-act> (last visited 21 Jan. 15).

¹⁶ *Id.*