UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED: January 18, 2017

CBCA 5259

KIRK RINGGOLD,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Christopher L. Campbell of Baker Manock & Jensen, PC, Fresno, CA, counsel for Appellant.

Elin M. Dugan, Office of the General Counsel, Department of Agriculture, San Francisco, CA, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **GOODMAN**, and **CHADWICK**.

CHADWICK, Board Judge.

Kirk Ringgold leased land in California to the United States Forest Service, a component of the respondent, Department of Agriculture (USDA), for use as a helicopter pad during a forest fire. He seeks $6000 in rent for the fifteen days the agency took to restore the property after vacating it. Mr. Ringgold elected the accelerated procedure of Board Rule 53 (48 CFR 6101.53 (2015)), but we resumed our usual procedure after delays requested by the parties made us unable to resolve the appeal in 180 days. The parties submitted the appeal on the written record under Rule 19, and we now grant it.

Background

The record and our findings are thin. Mr. Ringgold relies mainly on his own interrogatory responses, which are not sworn and are thus of minimal value as evidence.

See Rule 10; Fed. R. Civ. P. 603, 801(d)(2) (prior statement of *opposing* party is not hearsay). USDA, for its part, admits few facts, with important exceptions. Mr. Ringgold signed the lease in August 2015. The copy of the lease in the appeal file has no government signature, but USDA admits the contract was formed. The rent was $400 "[f]or each day, or portion therof[,] that the facilities are used." The lease provided that "[t]he Government may make alterations" and "shall restore owner's facilities to the[ir] condition . . . prior to Government occupancy; restoration shall be performed to the extent reasonably practical. Claims for reasonable costs incurred by the owner in restoring facilities to their prior condition shall be submitted to the Contracting Officer."

Forest Service contractors moved telephone equipment and portable toilets onto the property, along with enough "rock" to make the soil less muddy. The agency stopped using the site as a helicopter pad on September 24, 2015. The contracting officer promptly asked Mr. Ringgold to sign a "final" invoice, but Mr. Ringgold's wife advised the agency by email on September 26 (a Saturday) that the Ringgolds would expect rent until everything the agency had brought on site was gone. The contracting officer replied that the Forest Service could not control when its contractors would retrieve their items, and it would not remove the rock. He added, "Final date on the invoice will remain as is." USDA admits that the equipment and toilets remained on the property for at least a few days, and that the rock was relocated on the property, per Mr. Ringgold's instructions, "at Forest Service expense, on October 9, 2015." On October 21, 2015, Ms. Ringgold emailed the contracting officer a final invoice with the note, "An add'l 15 days rent, $6,000, is owed through 10/09/15 when USFS contractors were gone and rock removed. Please process this invoice for prompt payment of this agreed on amount for . . . helibase use." The Forest Service did not pay the $6000 and advised the Ringgolds that, if they believed additional rent was due, they should "submit [a] claim as outlined in the guidance/regulations." Mr. Ringgold filed this appeal in May 2016, more than sixty days after the contracting officer received the invoice for the extra rent.

Discussion

USDA argues that Mr. Ringgold did not submit a claim, so we lack jurisdiction under the Contract Disputes Act. *See* 41 U.S.C. § 7104(a) (2012). The October 2015 invoice was a claim. *See* 48 CFR 2.101 (defining "claim"). We use "a common sense analysis to determine whether the contractor communicated [a] desire for a contracting officer's decision" on a demand for a sum certain. *Moss Card Consulting, Inc. v. General Services Administration*, CBCA 5193, 16-1 BCA ¶ 36,291, at 176,988. Ms. Ringgold plainly communicated such a desire on Mr. Ringgold's behalf by asking the contracting officer to "process" the invoice with the disputed extra rent. When the contracting officer

did not issue an appealable decision on the claim within sixty days, Mr. Ringgold could deem the claim denied and file this appeal. 41 U.S.C. § 7103(f)(5).

Entitlement and damages flow from the facts admitted by USDA. Longstanding precedent holds the Government liable for continued rent, as a holdover tenant, during the time needed to restore leased property after it is vacated, at least where that period is not unduly extended. *See Hoover v. United States*, 3 Ct. Cl. 308, 311 (1867) (holding "loss incident to" forty-five days of post-lease vacancy for repairs "must be borne by the United States" at lease rate); *WRD Venture LLP v. General Services Administration*, GSBCA 16179, et al., 05-1 BCA ¶ 32,807, at 162,349-52 (2004) (awarding six and three-quarters months of continued rent during restoration); *Richard & Terry Ponce*, DOT BCA 2039, 90-1 BCA ¶ 22,517, at 113,009-11 (1989) (three months and one week). *But see Diamond Plaza, Inc*., PSBCA 3846, 97-1 BCA ¶ 28,737, at 143,448 (partially denying claim for approximately ten months of rent during restoration, and requiring proof of actual "lost rental income that [claimant] would otherwise have received or, alternatively, . . . rent . . . that it could have avoided paying [elsewhere]"). At this late date, a federal lease would need to expressly disavow this presumed measure of damages to make it inapplicable. This lease did not. It does not matter that the lease allowed Mr. Ringgold to restore the property and submit a claim for the costs. He still would have been entitled to rent for a reasonable restoration period. *Ponce*, 90-1 BCA at 113,110.

USDA argues that it did not "use" the land within the meaning of the lease after September 25. That is not the issue. Holdover rent remedies a breach of the duty to return the property in restored condition. *See Ponce*, 90-1 BCA at 113,110. The agency completed the restoration when it had the rock relocated to the Ringgolds' satisfaction on October 9. USDA asserts that the Ringgolds "never requested removal of the rock," but since the lease said the Government would restore the property to its pre-occupancy condition, no such request was necessary. It was the Forest Service's burden to ask whether it could leave the rock behind. Nothing in the record suggests that the Ringgolds asked for unreasonable restoration or delayed the short period of work in any way.

Decision

The appeal is **GRANTED**. The appellant is awarded $6000 plus interest under 41 U.S.C. § 7109(b) from October 21, 2015, until the payment date.

KYLE CHADWICK
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

ALLAN H. GOODMAN
Board Judge