The arbitration hearing in this matter was heard May 14, 2020, by Zoom video. Having reviewed all the evidence, amicus briefs, and the briefs of the parties, I now issue this ruling denying the relief which seeks.

**Statement of Facts**

1. (Tenant) is a tenant in a residential unit at apartment complex.

2. (Landlord) is a BYU approved off campus housing provider.

3. Landlord is obligated under a contract with BYU Off Campus Housing Office which governs Landlord’s duties as a BYU approved housing provider.

4. Tenant brings this action as he seeks termination of his lease pursuant to paragraph 23B which allows a tenant to terminate the lease “[i]f the [tenant] leaves school due to a verified unforeseeable and unexpected . . . serious illness.” Tenant asserts he has asthma, that it is particularly severe this year, and that the Covid-19 virus is of particular risk to individuals with asthma because of their already impaired respiratory system. His medical doctor provided a letter which confirms this concern.

5. On April 10, 2020, Tenant provided notice to Landlord that he had vacated the apartment on April 6, 2020 because of his asthma and his fear that the particularly close living quarters (6 persons in the apartment, 2 per bedroom with 2 shared bathrooms and a shared kitchen and living area) placed him a risk to contract the virus if any persons living in the apartment or visiting in the apartment had or were carrying the virus.

6. Landlord denied the request to terminate so this action ensued.

7. Paragraph 23D allows a tenant to terminate their lease on 120 days’ notice if the tenant is graduating from school. Tenant provided that notice as he completed his coursework at BYU and is graduating. His 120-day notice period expires approximately the end of May, 2020.

8. Tenant has paid both April and May rents, though he was late in doing so and thus Landlord asserts he owes late fees. Tenant also did not return the apartment key.

**Legal Analysis**

Tenant asserts that, given his asthma, and the serious concern that individuals who have asthma or respiratory disorders are at increased risk if they contract the Covid-19 virus, he falls within the provisions of paragraph 23B entitling him to terminate his lease.
Landlord asserts that paragraph 23B does not apply, asserting that there are various studies which establish that persons with asthma are not at higher risk if they contract the virus.

Section 23 analysis

Section 23 of the contract, in relevant part, reads as follows:

The Agreement may be automatically terminated, or terminated by the student, prior to its expiration, with all rental charges prorated through the last day of tenancy under the following circumstances and conditions:

...  
B. If the student leaves school due to a verified unforeseeable and unexpected catastrophic loss or serious illness. In such instances, termination of the Agreement is in effect after the landlord receives acceptable verification. Student shall forfeit security deposit and legal deductions.

...  
D. If at any time during the term of the contract the student graduates from BYU, receives a mission call, gets married, or is required to do an internship for graduation which necessitates leaving the area, the student may terminate with 120 days written notice and shall forfeit security deposit and legal deductions. After receiving the 120 day written notice, the landlord may at the end of any semester, re-let the rental space and thus relieve the student of any further obligation under this Agreement or continue to collect rents for the full duration of the 120 days. The student’s rent obligation continues 120 days from the date written notice is given to the landlord.

E. After student gives notice of his or her intent to vacate the property, if the student or landlord finds a suitable substitute student who executes a new rental Agreement with the landlord, the student may terminate without penalty or further contractual obligation. The last day of tenancy shall be the day before the substitute tenancy begins and the landlord shall not unreasonably decline to accept any suitable substitute student or aid the student in finding and renting the property to any suitable substitute student. Landlord may charge the student a reasonable fee for costs of early termination under this subsection provided such fee is agreed to in writing. If the student finds a suitable substitute student, which the landlord refuses to accept in a timely manner, the student may terminate without penalty or further contractual obligation. No subleasing or assignment is permitted.

Paragraph 23D provides that a tenant may terminate the lease “[i]f at any time during the term of the contact the student graduates from BYU . . . the student may terminate with 120 days written notice.”

In this case Tenant has completed his coursework at BYU and in late January 2020 (the exact date was not provided in this proceeding) gave notice under 23D that he was going to graduate and was terminating his tenancy. Both parties agreed that under this termination the lease term ends in late May. That paragraph further provides that the tenant must pay rent during the 120-day notice period and the tenant will forfeit the security deposit and legal deductions.
Even though Tenant has earlier terminated the lease under the provisions of paragraph 23D, Tenant now seeks to terminate even earlier than the termination provided under 23D, asserting that the serious illness termination provision of paragraph 23B allows this earlier termination.

Tenant’s argument is unavailing. Paragraph 23B cannot be read as though paragraph 23D does not exist or does not say what it says.\(^1\) By his action in January, giving notice that he was terminating the lease under paragraph 23D, the lease has been terminated. What remained after the January notice was for the parties to complete their various obligations: Landlord to allow Tenant continuing tenancy and quiet enjoyment of the property and Tenant to pay rent, which obligation expressly “continues 120 days from the date written notice is given to the landlord.” By the plain language of paragraph 23D, only Landlord retains the ability to shorten the time during which Tenant is obligated to pay rent. The exceptions to the obligation to pay rent for the full 120 days once 23D notice of termination has been given are set forth in paragraphs 23D and 23E: Either the landlord re-lets the apartment following the end of any semester as provided in 23D or a suitable substitute tenant “buys the contract,” (as the process is referred to colloquially) as provided in paragraph 23E.

When Tenant gave notice in January that he was graduating, the lease was terminated and the express obligation to pay rent for the 120 days following notice of his graduation became operative. Thus the parties already have established between themselves their respective rights and duties following the January notice of termination. This includes Tenant’s obligations to pay rent for April and May, which he has done, and to return his key. He also may owe late fees and Landlord’s fee for a lost key as provided in the lease and addendum.

**Summary, Conclusion and Ruling**

The lease between Landlord and Tenant was terminated by the January notice of termination. All that remains is the obligations of the parties to complete their duties under the lease as terminated. Landlord is obligated to allow Tenant the quiet enjoyment of the property until the end of the 120-day notice period unless Landlord re-lets the apartment and releases Tenant from his obligation to pay rent according to the provisions of paragraph 23D, or unless a substitute tenant is found according to the provisions of paragraph 23E. Tenant has paid the rents for April and May but is obligated to return his key or pay Landlord’s fee for a lost key and may be liable for any late fees provided under the lease.


*Anthony W. Schofield*

Arbitrator

\(^1\) *Jones v. ERA Brokers Consol.,* 6 P.3d 1129, 1132 (Utah 2000) (contracts are to be read as a whole, giving meaning, *i.e.*, effect, to each provision) (quoting *Dixon v. Pro Image Inc.,* 987 P.2d 48 (Utah 1999); *Nielsen v. O’Reilly,* 848 P.2d 665, 665 (Utah 1992); *Plateau Mining Co. v. Utah Div. of State Lands & Forestry,* 802 P.2d 720, 725 (Utah 1990)).