IN THE INDIANA COURT OF APPEALS
CAUSE NO. 32A01-1612-PL-2670

ROBIN KING,	)	
Appellant,	)	**Appeal from the Hendricks Circuit Court**
	)	
vs.	)	**Trial Court Cause No. 32C01-1606-PL-69**
	)	
REBECCA CONLEY,	)	**Hon. Daniel F. Zielinski, Judge**
Appellee.	)	

PETITION FOR REHEARING

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ARGUMENT

I.
As a Matter of Law, a Tenant's Unauthorized Change of the Locks on a Rental Property is a Material Breach of a Lease.

Interpretation of a contract presents a question of law and is reviewed *de novo*. *King v. Conley*, Memorandum Decision, Case No. 32A01-1612-PL-2670, November 21, 2017, p. 10 (*Citing*, *Stewart v. TT Commercial One, LLC*, 911 51, 55 (Ind.Ct.App. 2009)). A contract must be construed so as not to render any words, phrases, or terms ineffective or meaningless. *Id*. If a contract's language is unambiguous, the parties' intent is determined from the four corners of the instrument. *Claire's Boutiques, Inc. v. Brownsburg Station Partners, LLC*, 997 N.E.2d 1093, 1097 (Ind.Ct.App. 2013). The terms of the contract in this case are undisputed, as are Tenant's actions in changing the locks to the rental Property, making this a pure question of law. *King v. Conley*, Memorandum Decision, Case No. 32A01-1612-PL-2670, November 21, 2017, p. 9, 10, 15; Defendant's Exh. A; Tr. 50, 60, 104, 105, 108, 111-112.

In this Court's analysis of the issue on Appeal, the factual findings of the trial court, many of which are unsupported by the evidence, seem to have obscured this Court's of application of the law. Specifically, in considering the unambiguous terms of the Lease, it is clear that denying the Landlord access to the Property by changing the locks is a material breach of its terms. Defendant's Exhibit A, par. 4 and 15. This Court's holding that Tenant's change in the locks of the rental Property did not constitute a material breach of the Lease renders the terms of the contract ineffective and meaningless.

The Landlord was denied reasonable access as required in the Lease. She could not access the Property without negotiating an advanced time to enter the Property with Tenant's realtor as dictated by Tenant. Tr. 20, 24, 27, 42-43. Tenant even acknowledged that her actions in changing the locks and limiting access were contrary to her obligations under the Lease. Tr.

112. In short, the changing of a lock, which completely bars entry to a property, cannot be said to be immaterial as a matter of contract law. The key to the residence is the sole manner in which to access the property. Without it, the right of access serves no purpose and is rendered meaningless. A landlord could stand outside and possibly peer in the windows, but nothing more. This description is not meant to be facetious but solely to show the unmistakable problem with allowing a tenant to change the locks on a rental property rather than treating it as a material breach. It is a significant alteration with far-reaching implications.

Further, this Court's holding on Appeal is incongruous with Indiana statutory law. Our legislature clearly intended landlords to have reasonable access to rental properties and have expressly provided for such access. Indiana Code § 32-31-5-6; Indiana Code § 32-31-7-5(5). These statutes were created for the benefit of the landlord and the tenant. A landlord must have access to the property in the event of an emergency or necessity. Robin King was denied that access and could not have entered the Property if such an event occurred[1], all because the Tenant felt "uncomfortable" with statements made by Ms. King when Tenant was not present[2]. Tr. 111. This is not a term of the Lease and represents an unsound accusation that should not be relied upon by this Court.

Setting aside the inherent problems with Tenant's allegations, they are completely immaterial to the legal issue in this case. No matter how a tenant feels about a landlord, there is no lawful mechanism for a tenant to eradicate the Landlord's right of access to the property. As a

[1] The facts cited in the Memorandum Decision seem to imply that Landlord could have obtained access using the garage code. This is inaccurate for a couple of reasons. First, the code was changed at the time the locks were switched. Tr. 60, 62-63, 113. Second, and more relevant to the question of law in this case, is that garage access does not equal access to the Property. Pursuant to the Lease and Indiana law, the Landlord was entitled to reasonable access to the entire Property.

[2] Despite being uncomfortable giving Landlord access, Tenant provided non-parties to the Lease, such as the remediation contractor, with a copy of the key to the Property. Tr. 99.

matter of law, the Tenant could not change the locks to the rental Property, thereby denying Landlord access as expressly provided for in the Lease and pursuant to statute.

By holding that changing the locks to a rental property is not a material breach of a lease, this Court failed to follow prior legal precedent on this issue. In *Hoang v. Jamestown Homes, Inc*., 768 N.E.2d 1029, 1038 (Ind.Ct.App. 2002), a panel of this Court held that a promise in a lease by the tenant to allow the landlord reasonable access to the property for necessary repairs means that the landlord must have a way to enter the property even when tenant is not home. Therefore, a tenant is required to give the landlord a key, and any refusal to do so, constitutes an actionable breach of the lease agreement. *Id*. There has been no change in the law as applied in *Hoang* that would permit a different result in this case. Tenant clearly committed an actionable breach of the Lease. *See also*, *Carvajal v. Levy*, 450 So.2d 721, 722-723 (La.Ct.App. 1984) (When the tenant changed the door locks and denied the landlord entry without his approval, he interfered with the landlord's right of access to maintain the premises and thereby violated the lease).

Finally, it is contrary to public policy to allow a tenant of a rental property to change the locks to such property and demand that the landlord, the true title holder of the property, heed to their requirements for access to the property. If this precedent stands, tenants all over Indiana can lock out their landlords without repercussion[3]. One can only imagine the results. This is most certainly not what the Indiana legislature intended in enacting the laws related to the relationship between tenants and landlords. Accordingly, this Court should grant rehearing,

[3] This is an action that even landlords are prohibited by law from taking, and thus, should be equally applicable to tenants. *See*, Ind. Code § 32-31-5-6(c) (landlord cannot deny or interfere with a tenant's access to the property by any act, including changing the locks on the property).

reverse the trial court's Order, and remand this case with instructions to evict Tenant from the Property.

II.
As a Matter of Law, a Tenant must follow the express Terms of an Option to Purchase in Order to be Entitled to Specific Performance.

An option to purchase real estate must be exercised within the time and in the manner stipulated. *King v. Conley*, Memorandum Decision, Case No. 32A01-1612-PL-2670, November 21, 2017, p. 11 (*Citing*, *Pinkowski v. Calumet Twp. of Lake Cty*., 852 N.E.2d 971, 981 (Ind.Ct.App. 2006). If the option holder fails to comply with the option's terms, the option holder deprives herself of the right to demand enforcement of the contract. *Id*. A party seeking to enforce an option to purchase must prove that she has substantially performed her obligations under the option or offered to do so. *Id*. The analysis of whether an option holder is entitled to specific performance is also a pure question of law.

The evidence is undeniable in this case. Tenant, the option holder, did not exercise the Option to Purchase in the manner stipulated by and in the Option, nor did she substantially perform her obligations under the Lease or the Option. On March 20, 2016, Tenant changed the locks to the rental Property without permission from Landlord. After having changed the locks to the rental Property, Tenant placed a handwritten note, dated March 25, 2016, around a rent check and deposited it in Landlord's mailbox. Appellant's App. 53; Tr. 102, 110; Defendant's Exhibits B, C and G. Thus, the handwritten note was written five (5) days after the locks were changed, terminating the Option. No notice by Landlord was required at that time as she could not have known the locks had been changed as Tenant took this action without notice or permission.

This Court expressly stated in its Memorandum Decision that "the determination that Conley exercised her Option before the occurrence of any Event of Default under the Lease is not clearly erroneous". *King v. Conley*, Memorandum Decision, Case No. 32A01-1612-PL-2670, November 21, 2017, p. 12. Not so. This holding is based on the finding of the trial court that Landlord had not served Tenant with the letter of default when Tenant purportedly placed her handwritten note around the rent check. *Id*. However, even assuming that Landlord received the note on March 25, 2016, Tenant had already defaulted on her obligations pursuant to the Lease by changing the locks.

On March 20, 2016, five (5) days prior to the letter, Tenant unilaterally, without notice or authorization, physically altered the Property by changing the door locks, thereby preventing Landlord access to the Property. The Landlord could not have known about this breach at the time, and even Tenant conceded at trial that her actions violated the Lease terms. Tr. 112. Consequently, Tenant deprived herself of the right to specific performance, since Landlord was entitled to terminate the Option, if at any time Tenant was in default of the Lease. *King v. Conley*, Memorandum Decision, Case No. 32A01-1612-PL-2670, November 21, 2017, p. 11; Defendant's Exh. B, section 1.6. Tenant was in default of the Lease terms on March 20, 2016, thus giving Landlord the right to terminate the Option. Accordingly, this Court's holding that Tenant exercised the Option prior to any Event of Default is erroneous as a matter of law.

As to the manner of exercising the Option, Tenant did not comply with the stipulated requirements of providing Landlord proper notice of her intent to do so. The Option requires Tenant to provide written notice to Landlord in one of two ways. Pursuant to the express terms of the Option, Tenant could "actually serve upon the Vendor" or "place an envelope directed to the Vendor at the address of the Vendor shown above and deposited in the United States mail by

certified or registered mail, postage prepaid". Tenant did neither of those things. Clearly, she did not send notice by certified or registered mail. Further, there is no reasonable or equitable argument that Tenant "actually served" Landlord by placing a handwritten note in her mailbox with her rent check. Such a holding is contrary not only to contract law, but to the legal process in general. *See*, Ind. Rule of Trial Procedure 4.1(B) (when leaving complaint and summons at person's home, the party must follow with service by mail). Therefore, Tenant did not exercise the Option in the manner stipulated by the parties, and as a result, is prohibited, as a matter of law from demanding enforcement of the Option. *King v. Conley*, Memorandum Decision, Case No. 32A01-1612-PL-2670, November 21, 2017, p. 11.

CONCLUSION

As a matter of law a tenant cannot change the locks on a rental property and deny a landlord access to the property. This constitutes basic public policy and has been established by Indiana statute. Furthermore, an option holder must exercise the option to purchase real estate pursuant to the stipulation of the option. Tenant was in violation of the Lease and the Option, and therefore, as a matter of law, could not demand enforcement of the Option. Accordingly, rehearing should be granted, the trial court's Order should be reversed, and the case should be remanded with instructions to terminate the Option and evict the Tenant from the Property.

Respectfully submitted,

/s/ Darlene Seymour
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WORD COUNT CERTIFICATION

I, Darlene Seymour, verify that this Petition to Transfer contains 2,329 words of the 4,200 allowed under App. Rule 44(E), excluding those items excluded from page length limits under App.Rule 44(C), as determined by the word counting function of Word 2010.

/s/ Darlene Seymour
Darlene R. Seymour

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was served upon the following this 21st day of December, 2017, via the Court's electronic filing system:

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