DECISION

Introduction

The Tenant seeks an order pursuant to s. 49 cancelling a Four Month Notice to End Tenancy for Demolition or Conversion of a rental unit signed on July 18, 2023 (the "Four Month Notice").

M.A. attended as the Tenant. A.M. and K.H. attended as the Landlord's agents. S.H. attended as caretaker for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of Documents

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

1) Should the Four Month Notice be cancelled? If not, is the Landlord entitled to an order of possession?

Evidence and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit on October 1, 2020.
- Rent of $1,449.42 is due on the first day of each month.
- A security deposit of $700.00 was paid by the Tenant.

I am provided with a copy of the tenancy agreement.

1) Should the Four Month Notice be cancelled? If not, is the Landlord entitled to an order of possession?

A landlord may end a tenancy under s. 49(6)(e) of the *Act* if it has all the necessary permits and approvals required by law and intends, in good faith, to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property. As per s. 49(2)(b) of the *Act*, when a notice is issued under s. 46(6) the landlord must give the tenant at least 4 months notice. Upon receipt of a notice to end tenancy issued under s. 49(6) of the *Act*, a tenant has 30 days to file an application disputing the notice. Where a tenant has filed an application to dispute the notice to end tenancy, the burden of proving that the notice was issued in compliance with the *Act* rests with the landlord.

The Landlord's agent K.H. advises that the Four Month Notice was served via registered mail sent to the Tenant on July 18, 2023. The Tenant acknowledges receipt of the Four Month Notice on July 21, 2023. I find that the Four Month Notice was served in accordance with s. 88 of the *Act* and was received by the Tenant on July 21, 2023.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed his application on August 15, 2023. Based on this, I find that he filed the application within the 30-day deadline imposed by s. 49(8)(b) of the *Act*.

As per s. 49(7) of the *Act*, all notices issued under s. 49 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the Four Month Notice provided to me by the parties and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-29).

The Landlord's agent A.M. advised that the Landlord is seeking to turn the Tenant's rental unit into a caretaker suite for S.H.. I am advised by A.M. that the residential property is an 8-unit apartment building and does not currently have a live-in caretaker. According to A.M., the residential property may be a smaller building but is older and requires more maintenance. I am told by A.M. that the residential property previously had part-time caretakers, but that they were not always available. The agent tells me that the Landlord is seeking to have a live-in caretaker to look after the property and address its ongoing maintenance needs.

A.M. advises that in late 2022 the Landlord spoke to the Tenant and the tenants in the rental unit neighbouring the Tenant's rental unit to explore if either would be willing to

vacate for a live-in caretaker. A.M. testifies that the neighbouring tenants advised that they would be moving out. The Landlord's evidence includes a copy of a mutual agreement to end tenancy signed on December 1, 2022 by the neighbouring tenants. The mutual agreement states the neighbouring tenants would vacate by June 30, 2023.

A.M. testified that the neighbouring tenants ended up vacating their rental unit on April 30, 2023 and that at that time the Landlord had not yet secured a caretaker to live at the residential property. Given that there was no caretaker, the Landlord instead re-rented the neighbouring rental unit. I am told by A.M. that it was only after the neighbouring rental unit was rented that S.H. had agreed to reside at the residential property as a live-in caretaker.

S.H. provides a sworn statement put into evidence by the Landlord. It indicates that S.H. is currently employed as a caretaker for the Landlord and requested a transfer to a different building. The statement goes on to indicate that S.H. agreed to move into the rental unit at the residential property as the resident manager and would be paid $25.00 an hour and pay $1,450.00 in rent each month for the rental unit. I am told by the Landlord's agent that the rental unit is a one-bedroom, which is the same size as S.H.'s current rental unit at the residential property where he resides.

The Tenant argues that the Four Month Notice was issued in bad faith and that his rental unit and his neighbour's rental unit were targeted as they are paying the least amount of rent at the building. The Tenant further states that his rental unit is a studio apartment, not a one-bedroom. The Tenant also argued the Landlord is acting in bad faith as it did not make sense for it to seek out a rental unit for a caretaker at the end of 2022 if they did not yet have someone in mind.

The Tenant's evidence includes correspondence between he and the former tenants at the neighbouring rental unit. That correspondence states that the former tenants paid $1,535.00 in rent for the neighbouring rental unit. The Tenant's evidence also includes correspondence between he and the current tenants at the neighbouring rental unit. That correspondence states that the current tenants pay $2,375.00 for the neighbouring rental unit.

A.M. argued that the Tenant's rental unit was chosen as S.H. does not need additional space and that rental unit is the smallest in the building. It was argued by A.M. that there is an opportunity cost associated with giving a rental unit to a caretaker that could otherwise earn greater income. A.M. finally argued that the Tenant has been given a notice of rent increase and will be paying higher rent than the caretaker.

The Tenant rebutted these arguments by testifying that the neighbouring rental unit, the one in which the Landlord obtained a mutual agreement to end tenancy for the caretaker, was one of the larger units in the residential property. It was further argued by the Tenant that the residential property has another studio apartment similar to his own but that those tenants pay higher rent, thus explaining why his rental unit was

targeted. The Tenant's evidence includes correspondence with occupants of the similar studio apartment in which they state they pay $1,760.00 in rent.

In these circumstances, I accept that mere occupation of a rental unit by the caretaker does not require a permit or other authorization at law. This is merely moving a caretaker into a rental unit which is currently occupied by the Tenant.

With respect to the good faith requirement, Policy Guideline #2B provides guidance on this issue and states the following:

> **GOOD FAITH**
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> In *Gichuru v. Palmar Properties Ltd.,* 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann,* 2019 BCCA 165.
>
> Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section32(1) of the RTA).
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> In some circumstances where a landlord is seeking to change the use of a rental property, a goal of avoiding new and significant costs will not result in a finding of bad faith: *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371.
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> If a landlord applies for an order to end a tenancy for renovations or repairs, but their intention is to re-rent the unit for higher rent without carrying out renovations or repairs that require the vacancy of the unit, the landlord would not be acting in good faith.
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> If evidence shows the landlord has ended tenancies in the past for renovations or repairs without carrying out renovations or repairs that required vacancy, this may demonstrate the landlord is not acting in good faith in a present case.

I place significant weight on the fact that the Landlord admits that it explored obtaining a rental unit for a caretaker at the residential property at the end of 2022. In fact, the Landlord did obtain the consent of the former tenants at the neighbouring rental unit that they would vacate for the caretaker on June 30, 2023. I accept that those tenants did

move-out of the rental unit on April 30, 2023, which may have been sooner than planned by the Landlord.

However, I do not accept that the early departure of the neighbouring tenants explains why their rental unit was not used by the caretaker. I agree with the Tenant that it makes little sense to plan for a caretaker in late 2022 if there was not someone in mind. Nor does it make sense, in my view, to set an effective date for the mutual agreement to June 30, 2023 if the Landlord did not plan to have someone ready to move into the neighbouring rental unit in July 2023.

I note that the difference of 2 months between when the neighbouring tenants moved out and June 30, 2023, being the planned end date for their tenancy, is so significant as to explain why the caretaker simply did not move into the neighbouring rental unit. Surely the Landlord would have had someone lined up by April 30, 2023 to move in on June 30, 2023. That does not appear to have occurred. Instead, the Landlord served the Four Month Notice on July 18, 2023 which set an effective date of November 30, 2023, another five months after they had originally planned to have a caretaker in the neighbouring rental unit.

I note that the neighbouring tenants were not served with a Four Month Notice but ended their tenancy by way of mutual agreement. In other words, they did not receive a notice to end tenancy under s. 49 of the *Act* and are, therefore, no entitled to compensation under s. 51. In the case of s. 51(2) of the *Act*, a tenant could be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement.

I find it likely that the Landlord decided to re-rent the neighbouring rental unit, despite securing it for the caretaker, on the basis that it could generate higher rental income and that there was no risk the Landlord would be subject to a compensation claim from its former occupants under s. 51(2) of the *Act*. I accept that the neighbouring rental unit is, in fact, larger than the Tenant's and can generate a higher rental income for the Landlord.

Under these circumstances, I find that the Landlord issued the Four Month Notice in bad faith as it already had a rental unit for the caretaker to occupy. The only reason the Tenant's rental unit is being subjected to the Four Month Notice is because the neighbouring tenants moved out without demanding service a notice to end tenancy under s. 49. The Landlord made the decision to maximize its rental income, even though a rental unit had previously been secured for the caretaker.

As I have found that the Landlord issued the Four Month Notice is bad faith, it is hereby cancelled and is of no force or effect.

Conclusion

I grant the Tenant his relief and cancel the Four Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 17, 2023