Docket: 2024-1191(GST)I

BETWEEN:

YORAM ELHAV,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on July 16, 2025 and September 4, 2025,

at Toronto, Ontario

Before: The Honourable Justice Lara Friedlander

Appearances:

For the Appellant:	The Appellant Himself
Counsel for the Respondent:	Melanie DaCosta

JUDGMENT

UPON hearing from the parties:

The appeal from an assessment under the *Excise Tax Act* ("ETA") with respect to the Appellant's Goods and Services Tax/Harmonized Sales Tax ("GST/HST") New Housing Rebate Application is dismissed, without costs.

Signed this 1st day of October 2025.

"Lara Friedlander"

Friedlander J.

Citation: 2025 TCC 132
Date:20251001
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BETWEEN:

YORAM ELHAV,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Friedlander J.

[1] This appeal relates to the eligibility of Yoram Elhav for the GST/HST New Housing Rebate (the "Rebate") in respect of the purchase of a two-bedroom, two-bathroom condominium unit located in the east end of Toronto, Ontario (the "Property") in 2020. The Minister of National Revenue had denied the application for the Rebate on October 25, 2022, as confirmed on March 11, 2024, on the basis that the Appellant and his wife did not acquire the Property with the intention of using it as a primary place of residence for himself, herself or a relation, and also on the basis that neither he nor his wife nor another relation was the first to occupy the Property after substantial completion of its construction.

[2] I dismiss the appeal for the following reasons.

BACKGROUND

[3] The Appellant and his wife entered into a purchase agreement on January 28, 2017 for the Property, which at that time had not yet been built. The Appellant testified that he and his wife purchased the Property with the intention that it be used by their son, Michael Elhav ("Michael" or "Yam"), as Michael's primary residence.

[4] At the time the purchase agreement for the Property was entered into in 2017, Michael was 20 years old. He was a student living in the family home in Vaughan,

Ontario, where the family had lived since approximately 2010. He was attending a university in Rexdale, Ontario, from where he would graduate in June of 2019. The Appellant testified that he and his wife had wanted to give Michael a gift by providing him with a condominium unit where he could start his adult life and, as the Appellant testified, raise a family. The Appellant stated that he and his wife assumed that Michael would ultimately get a job in downtown Toronto, and therefore chose the location of the Property based on two main factors: affordability for the Appellant and his wife, and proximity to a subway that would allow for accessibility to downtown. The Appellant did not provide any evidence as to why he and his wife assumed that Michael would ultimately work in downtown Toronto. Michael testified that in late 2016 and early 2017 he was working part-time for a real estate developer whose office was in North York. This job would later become a full-time job. Michael testified that in early 2017 he was certain that he would work in Toronto — which I understood to mean Toronto and surrounding areas such as Vaughan — and that his career was somewhat certain.

[5] The Appellant did not provide any further information or documentation relating to the affordability of the Property. The Appellant stated that he anticipated that Michael would eventually start funding expenses associated with the Property; Michael stated that he understood that he would be able to stay in the Property without cost, although it was unclear whether he understood that to be a permanent arrangement. There was no concrete plan as to when and to what extent Michael would begin bearing expenses relating to the Property. There was no evidence offered regarding considerations relating to the funding of mortgage payments or other expenses relating to the Property given the absence of rent from Michael in the near-term and possibly indefinitely and the absence of estimates as to when Michael might begin funding expenses relating to the Property.

[6] The Appellant indicated that proximity to something “interesting” was also considered in selecting the Property. However, the Appellant stated that the absence of friends and family in the neighbourhood was not a factor that the Appellant and his wife considered when selecting the Property. Testimony indicated that the Property was at least 40 minutes from the family home in Vaughan where, at the time of the purchase, Michael’s personal life was centered.

[7] The Appellant stated that the other neighbourhood he and his wife considered was the Oakdale neighbourhood in a more central area of Toronto, but that it was rejected due to lack of proximity to the subway. The Appellant did not mention consideration of any property in or near the Vaughan area.

[8] The Appellant testified that he told Michael about the purchase of the Property at some point during the construction period, although at a different point in the Appellant's testimony he stated that he told Michael about the Property just a week or two after the purchase. Michael's testimony was somewhat different; he testified that he was involved in the purchase by going to the sales centre and selecting the type of unit he would like to live in; he testified that he was not involved in selecting the building.

[9] The Appellant testified that construction of the Property was expected to have been completed prior to June of 2020, but could not remember the precise date.

[10] The Appellant testified that at or around the time that the Property was purchased, he also purchased a rental property in Guelph, Ontario.

[11] During the construction period the Appellant and Michael visited the Property to inspect its progress.

[12] The Appellant and his wife took possession of the Property on June 4, 2020.

[13] Around the time of the closing of the purchase agreement for the Property, Michael left his full-time job with the real estate developer and became a real estate agent with a company located in Vaughan. That company's head office was closed due to COVID-19, but in any case, as a real estate agent, Michael rarely went to the office. Michael's work took him to many places in and near Toronto, including locations as far as Kitchener and Barrie; I infer from that testimony as well as credit card statements provided to the Court and testimony relating thereto that Michael generally drove to these locations rather than using the subway.

[14] Michael testified that he moved into the Property shortly after his parents took possession on June 4, 2020. Many of the common areas were still under construction, and many minor repairs in the unit were necessary. In preparation for the move, Michael obtained a quote from a moving company. The quote indicated that a number of items were to be moved, including a queen-sized bed, night-tables, 4 chairs, a coffee table, a sofa, small appliances and several large boxes. Michael testified that he ultimately decided not to use a moving company because he thought it was too expensive, and instead rented a U-Haul and got some help with the move from his friends. The quote indicated an estimate of 4 hours at a rate of $139.00. Accordingly, pre-tax, it would appear that the quote was for $556.00 before tax. Michael also testified that he ultimately moved a television, sofa, bed (which he indicated was from the family home in Vaughan), mattress, personal items, a table

(which he made himself), the vast majority of his clothing and shoes, his electronics and other items. Some photographs provided by the Appellant showed the presence of some of the furniture mentioned above, including the bed (and a sleeping occupant) and two night-tables in one case, and a larger table in the kitchen in another. One photograph, dated August 9, 2020, shows a person cooking; the photograph shows a number of objects on the kitchen countertop, including cooking utensils, cookware and small appliances.

[15] Shortly after moving in Michael obtained a quote for custom blinds, although ultimately chose custom drapes as the blinds were too expensive. He testified that he hung paintings up in the apartment. He also began making arrangements to install a charger for his Tesla, but suggested that this did not progress to installation, at least prior to his move out of the Property.

[16] Michael said he began sleeping at the Property when he moved in, but would visit the family home once or twice per week on average. On those occasions he would not sleep at the family home.

[17] Credit card statements showing purchases from early June to early July showed purchases in Toronto, Vaughan, Thornhill and other areas.

[18] Accounts with Rogers for internet, Enercare and Toronto Hydro were set up. The Court was also provided with evidence dated February 25, 2021 regarding the non-payment of Toronto Hydro bills to the end of October. A tenant insurance policy for a term of one year was obtained; the Appellant indicated that tenant insurance was required by the building. The Rogers arrangements were made on a month-to-month basis. There was no direct evidence regarding usage of utilities.

[19] Michael did not change his mailing or residential address for the purposes of his health card, driver's license or passport, for banking or any other financial matters, with the Canada Revenue Agency or for any other purpose.

[20] Michael testified that he had guests over very often when he first moved into the Property, but that gradually people stopped visiting as frequently, and that he felt increasingly isolated from his community. He also testified that the uncertainty regarding COVID-19 restrictions was exacerbating the situation. At some point Michael decided that he wanted to move back to the family home.

[21] A letter written by the Appellant to the CRA (the "CRA Letter") indicated that Michael decided to leave the Property "due to longer-than-expected commute times,

up to 1.5 hours each way, given his job, located at 1136 Centre St. in Vaughan." The letter also states "I made sure to best align with the criteria for the GST/HST New Residential Rental Property Rebate as I understand it".

[22] A lease with a third party was signed on September 22-23, 2020. Michael estimated that, based on the date of the lease, the uploading of information about the Property onto the relevant database must have taken place at least 10 days beforehand. The Appellant estimated that the decision to move was made in late August. I note that Michael is listed as the real estate agent on the lease and associated documents. When he moved out of the Property Michael moved his furniture and belongings back into the family home in Vaughan. Michael currently lives in North Toronto in rental accommodation near his uncle and aunt.

[23] Legal title to the Property passed to the Appellant and his wife on October 16, 2020. Upon closing, the Rebate was credited by the builder to the Appellant and his wife. The purchase of the Property was financed with a mortgage.

[24] The Property is still owned by the Appellant and his wife, and is still leased out to a third party. No testimony was provided as to why the Appellant and his wife chose to keep the Property and rent it out, even though, as Michael testified, the real estate market was very strong during that period.

LEGAL FRAMEWORK

[25] Under subsection 254(2) of the *Excise Tax Act* (the "ETA"), an individual is eligible for a partial rebate of GST/HST where certain requirements are met. One of the requirements is in paragraph 254(2)(b) of the ETA, which provides that:

> at the time the particular individual becomes liable or assumes liability under an agreement of purchase and sale of the complex or unit entered into between the builder and the particular individual, the particular individual is acquiring the complex or unit for use as the primary place of residence of the particular individual or a relation of the particular individual...[1]

[1] Subsection 262(3) of the ETA (as it read in respect of agreements entered into prior to April 20, 2021) provides that, where a supply of a residential complex is made to two or more individuals, the references to "particular individual" in subsection 254(2) are read as referring to all of those individuals as a group, although only one of those individuals may apply for the Rebate. A residential unit is a residential complex, as the latter term is defined in subsection 123(1) of the ETA. The Respondent, as well as the Appellant, takes the position that any findings of fact relating to the Appellant are also applicable to his wife.

[26] Another requirement, in paragraph 254(2)(g) of the ETA, as it applies to these facts, is that the first person to occupy the unit as a place of residence at any time after substantial completion of the construction is the particular individual or a relation thereof.

[27] A "relation" of a particular individual is defined in subsection 254(1) of the ETA as another individual who is related to the particular individual, as well as certain other individuals. Subsection 126(2) of the ETA refers us to subsections 251(2) to (6) of the *Income Tax Act*, which in turn provide that a child of an individual is related to that individual.

[28] The Minister does not take issue with any of the other Rebate requirements in subsection 254(2) of the ETA, and agrees that Michael is a "relation" of the Appellant and his wife.

WERE THE REQUIREMENTS OF PARAGRAPH 254(2)(b) SATISFIED?

[29] The test to be applied is whether the Appellant, at the time the Appellant became liable to pay the purchase price under the purchase agreement for the Property, intended that the Property be used as the primary place of residence of Michael. In this case, the requisite intention must be tested as of January 28, 2017, when the purchase agreement was signed.

[30] The Respondent has assumed in the Reply that the Appellant did not acquire the Property with the intention of using it as a primary place of residence for the Appellant or a qualifying relation of the Appellant. Factual assumptions made by the Respondent are to be accepted by the Court unless the Appellant persuades the Court that, on a balance of probabilities, the assumptions are not correct (*Hickman Motors Ltd. v Canada*, [1997] 2 SCR 336 at paragraphs 92-94).

[31] As noted by the Court in *Fard v The Queen*, 2022 TCC 42 at paragraph 23, "the best way of determining intention is to objectively look at all the surrounding factual circumstances" and, at paragraph 30, "statements of subjective purpose and intent are not necessarily the most reliable basis upon which such a question is to be determined."

[32] Other than oral testimony, there is no evidence regarding the intention of the Appellant. The Appellant did not adduce any documentary evidence, or any evidence from a person other than himself or Michael, regarding the process of deciding to purchase or actually purchasing the Property such as correspondence

with a real estate agent or documentation relating to the affordability of the mortgage in the absence of rental income. Accordingly, the question of whether the requirements of paragraph 254(2)(b) are satisfied is entirely a matter of credibility.

[33] In this regard, I do not find the Appellant to be credible.

[34] The Appellant stated that he and his wife chose the location of the Property on the assumption that Michael would be working in downtown Toronto. In late January of 2017, Michael was still a university student, over two years away from graduation. He was living in the family home, located in Vaughan, an area north of Toronto, and was working part-time at a real estate developer also based in Vaughan. That job became a full-time job relatively soon thereafter, and indeed Michael had become a real estate agent by the time the purchase of the Property closed. The Appellant did not provide any reason why he assumed that Michael would be working in downtown Toronto, nor did the evidence adduced demonstrate any basis for that assumption. Indeed, in his submissions the Appellant himself noted, addressing the fact that Michael did not have a job near the Property, that it can be difficult to find a job in a particular area. The Appellant also did not provide evidence as to why he assumed that proximity to the subway would be of significant importance to Michael given that the type of work to which Michael appeared to be headed involved a great deal of travel by car regardless of the location of the office.

[35] Furthermore, the Elhavs appear to be a close family. Michael visited the family home approximately twice per week when Michael moved into the Property, and Michael eventually moved to an area that was closer to his uncle and aunt. The Appellant's acknowledgement that proximity to family and friends was not considered by him and his wife when selecting the Property seems unlikely if the Appellant and his wife had a settled intention that Michael would live primarily at the Property, particularly given the Appellant's testimony that he intended Michael to settle down and raise a family there. Indeed, it is surprising that the Appellant did not consider other neighbourhoods near the subway line that were closer to Vaughan.

[36] In addition, the absence of evidence regarding the determination affordability of the Property given the uncertainty regarding the timing and extent of Michael's eventual funding of the costs of the Property was notable.

[37] The testimony regarding Michael's involvement in the selection of the Property was also problematic. First, it seems unlikely that the Appellant would have selected the building, or at least the neighbourhood where the building would be located, without the input of Michael if Michael were truly the intended resident,

particularly given that Michael, by that time, already had some experience in real estate. Second, the testimony of the Appellant and Michael was somewhat inconsistent as to how and when Michael became involved in and learned about the purchase of the Property, which was notable given that the Appellant was present for the entirety of Michael's testimony and given the Appellant's detailed description and recollection of certain other facts during the course of his testimony and advocacy.

[38] The Appellant's efforts to signal to Michael during the cross-examination of Michael were not supportive of the Appellant's (or Michael's) credibility. I also note that the CRA Letter written by the Appellant referenced "longer-than-expected commute times, up to 1.5 hours each way, given his job, located at 1136 Centre St. in Vaughan" as being the reason for Michael's move, but that that statement is inconsistent with Michael's testimony that he rarely went into the office.

[39] This Court has stated that the actual use of the property can be a good indicator of the purchaser's intention when purchasing the property. See, for example, *Margolin v The Queen*, 2018 TCC 36 and *Fard, supra*. As discussed below, I find that, on a balance of probabilities, Michael did in fact occupy the Property for purposes of paragraph 254(2)(g) of the ETA. However, the argument that Michael's occupancy of the Property confirms the intentions of the Appellant and his wife upon purchase of the Property in January of 2017 is materially weakened by the brief nature of Michael's occupancy and the reasons for his return to the family home. I also note that in the interim Michael had become a real estate professional who, in his testimony, demonstrated that he has some knowledge of the various GST/HST rebates available to purchasers of newly built residences. In the CRA Letter itself, the Appellant states that he "made sure to best align with the criteria for the GST/HST New Residential Rental Property Rebate". Setting aside the fact that the CRA Letter references the New Residential Rental Property rebate rather than the Rebate in issue here, the CRA Letter does state that the Appellant had some consciousness of aligning facts so as to enable eligibility for the Rebate.

[40] The Appellant argues that if he had intended to rent the property, he could have applied for the New Residential Rental Property rebate in section 256.2 of the ETA. Whether the Rebate in issue here or the rebate in section 256.2 of the ETA was the more appropriate rebate (or whether any particular rebate was even available, and for what amount) was a question for the Appellant to consider in October of 2020, when the application for the Rebate was signed. Indeed, the fact that the CRA Letter references the New Residential Rental Property Rebate might indicate that the Appellant was uncertain as to which was the rebate for which he had applied. In any

case the wording of the CRA Letter undermines the Appellant's argument that would not have applied for the Rebate had he intended to rent the Property.

[41] It is possible that, in January of 2017, the Appellant thought that Michael might live at the Property as his primary residence. However, a mere possibility is not sufficient. As set out in *Kniazev v The Queen*, 2019 TCC 58 at paragraph 7, "[w]hat is required is a clear and settled intention to occupy the premises as a 'primary place of residence', considered in the context of an individual's personal, family and work related circumstances. A tentative, fleeting or whimsical intention does not suffice."

[42] For the reasons set out above, I find that the Appellant has not provided sufficient evidence, on a balance of probabilities, to demonstrate that the assumption of the Respondent that the Appellant did not acquire the Property with the intention of using it as a primary place of residence for himself or a qualifying relation was incorrect. Accordingly, I find that the requirements of paragraph 254(2)(b) of the ETA were not satisfied.

WERE THE REQUIREMENTS OF PARAGRAPH 254(2)(g) SATISFIED?

[43] The Respondent also assumed as a fact that neither the Appellant nor a qualifying relation of the Appellant has occupied the Property as a primary place of residence.

[44] As stated by this Court in *Gill v. The Queen*, 2016 TCC 13 at paragraph 29, "[t]ransitory occupancy cannot satisfy the requirement that the purchaser be 'the first individual to occupy the complex' within the meaning of paragraph 254(2)(g) of the ETA." The Court in *Sozio v The Queen*, 2018 TCC 258 set out a list of factors to be considered when determining whether a property has been occupied for purposes of paragraph 245(2)(g) of the ETA. These are described by the Court at paragraph 14 as follows:

> (a) demarcation of primary place of residence by change of address;
>
> (b) the relocation of sufficient personal effects to the rebate property;
>
> (c) if no occupancy of the residence, was there cogent evidence of frustration of occupancy;
>
> (d) permanent occupant insurance versus seasonal or rental coverage;

(e) delivery of possession of previous primary residence to another;

(f) if dual occupancy continues, then the rebate property must be more frequently occupied, more convenient to third party locations such as work, more convenient amenities and more suitable to the needs of the taxpayer.

[45] I note, in respect of factor (d), that only tenant insurance was obtained, but there was some testimony that this insurance was required by the building. The tenant insurance was also purchased for a term of only one year; there was no evidence regarding the rationale for selecting this term in contrast to a longer term. I also note that Michael should not be considered to have had dual occupancy at the Property and at the family home during the relevant months of 2020 given that he was not spending nights at the family home and had moved almost all of his personal effects to the Property. Given the particular circumstances of this case, factors (a) and (b) above are the most relevant.

[46] In this case Michael did not change his address with any governmental authority or other institution. I do not place very much weight on this fact. The evidence presented to the Court indicates that many communications relating to the Property, at least, were done electronically. It is unclear how much physical mail would actually have been received by Michael. Further, given Michael's regular visits to the family home, it would have been easy for him to pick up any mail delivered there. There was no evidence as to whether any income tax returns, which might have indicated a new address, were filed during Michael's occupancy of the Property.

[47] Photographic evidence indicates that Michael did move a number of pieces of furniture, including a bed frame and mattress, at least two night-tables and another bigger table, to the Property and had kitchen utensils, pots and pans and small appliances at the Property.

[48] In considering paragraph 254(2)(g) of the ETA, the Court in *Kandiah v The Queen*, 2014 TCC 276 stated at paragraph 21 as follows:

> Taking a few belongings (mattresses and towel for example), leaving behind virtually all of your other belongings and furnishings in the family home, does not constitute actual use of …[the property in question]…as the primary place of residence for the family. At best, I would describe Mr. Kandiah's and his daughter's arrangement as camping, not residing – certainly not residing as a primary place of residence.

[49] The Court in *Fard, supra*, at paragraph 38, states that "[m]oving in a few items of furniture and staying there a short period of time on a temporary basis is not enough to establish 'occupancy' within the meaning of paragraph 254(2)(g)." In that case, the Appellant's husband had testified that they were just "testing the waters" and only moved a few items of furniture into the property, which were found not to be sufficient to support a long-term living arrangement.

[50] Unlike the situation in *Fard*, the furniture moved into the Property by Michael was sufficient to support a longer-term living arrangement of a man in his early twenties who was the sole occupant of the Property. It was not merely "camping".

[51] Is it possible that the absence of address changes indicates that Michael was just "testing the waters" when he moved into the Property? Or that he moved in at the request of the Appellant, with the understanding that Michael could move back home within a few months? Yes, those possibilities do exist. However, on a balance of probabilities, in view of the evidence that a considerable amount of furniture was moved and that Michael was indeed sleeping at the Property from early June until the decision was made, some time in late August, to move back to the family home, I find that Michael did occupy the Property during that period.

[52] Nevertheless, as I have concluded that the requirement in paragraph 254(2)(b) of the ETA has not been satisfied, I dismiss the appeal without costs.

Signed this 1st day of October 2025.

"Lara Friedlander"

Friedlander J.

CITATION:	2025 TCC 132
COURT FILE NO.:	2024-1191(GST)I
STYLE OF CAUSE:	YORAM ELHAV AND HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	July 16, 2025 and September 4, 2025
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DATE OF JUDGMENT:	October 1, 2025

APPEARANCES:

For the Appellant:	The Appellant Himself
Counsel for the Respondent:	Melanie DaCosta

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