Docket: 2024-2216(GST)I

BETWEEN:

YOGESH SHARMA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on November 4, 2025 at Toronto, Ontario

Before: The Honourable Justice Jean Marc Gagnon

Appearances:

Agent for the Appellant:	Kamal Sharma
Counsel for the Respondent:	Kirsten Humphrey

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal made from the Notice of Assessment dated June 21, 2023, in respect of the Appellant's Goods and Services Tax/Harmonized Sales Tax (GST/HST) New Residential Rental Property Rebate Application for 11 Sudeley Lane, Brampton, Ontario, is hereby dismissed, without costs.

Signed this 12th day of December 2025.

"J.M. Gagnon"

Gagnon J.

Citation: 2025 TCC 187
Date: 20251212
Docket: 2024-2216(GST)I

BETWEEN:

YOGESH SHARMA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Gagnon J.

[1] This appeal was heard on November 4, 2025 before this Court. At the hearing, it was discussed with the parties that after further consideration, an oral decision could be delivered. In such a case, the parties would be contacted to schedule a conference call for all the parties to attend. The Court having confirmed such approach with the Registry of the Court, the Appellant was contacted by phone on November 7th, and again on November 10th, 2025. An email was sent to the Appellant on November 10, 2025. All these attempts were unsuccessful.

[2] Considering the foregoing, the Court will reproduce hereinafter the reasons that would have been delivered had an oral decision been rendered.

I. **Introduction**

[3] The appeal was filed by Mr. Sharma, the Appellant, with respect to the notice of assessment dated June 21, 2023 under Part IX of the *Excise Tax Act* pertaining to the Appellant's Goods and Services Tax/Harmonized Sales Tax (GST/HST) New Residential Rental Property Rebate Application for the 11 Sudeley Lane, Brampton, Ontario (Rebate Property), claiming a rebate of $24,000 (Application).

[4] On August 17, 2022, the Appellant filed with the Minister of National Revenue the Application with respect to the Rebate Property. By notice of assessment dated

June 21, 2023 the Minister of National Revenue disallowed Mr. Sharma's Rebate Application.

[5] Following a notice of objection filed by Mr. Sharma, the Minister of National Revenue confirmed on June 17, 2024 the notice of assessment referred to in paragraph 3 above. On September 16, 2024, the Registrar Office of this Court received a Notice of Appeal filed by Mr. Sharma.

[6] I have read the documents filed by the parties as exhibits.

[7] I have heard the testimony and cross-examination of Mr. Sharma and Mr. Sharma's spouse, Mrs. Sonia Bibra. The parties called no other witness.

II. **Issue in dispute**

[8] The sole issue in dispute is whether the Rebate Property is a qualifying residential unit of the Appellant at the relevant time for purposes of paragraph (c) of subsection 3 of section 256.2 of the *Excise Tax Act*. For that purpose, subsection (1) of section 256.2 of the *Excise Tax Act* defines qualifying residential unit.

[9] If so, the appeal will be allowed, and the Appellant is entitled to the rebate claimed. If not, the appeal will be dismissed.

III. **Position of the Appellant**

[10] The Appellant argues that the condition in paragraph (c) of subsection 3 of section 256.2 of the *Excise Tax Act* is satisfied in the present case. The condition was satisfied through two successive leases that, in total, surpassed the one-year period relevant to the present matter. It was always the intention of the Appellant to lease the Rebate Property, and he did so under market conditions imposed by the market.

IV. **Position of the Respondent**

[11] The Respondent argues that the evidence introduced by the Appellant is not sufficient, on the balance of probabilities, to meet the Appellant's burden. A first lease of less than a year was signed by the Appellant for the Rebate Property. In addition, the Appellant did not demonstrate that on the balance of probabilities, it was reasonably expected by the Appellant that at the particular time the first use of the Rebate Property is a place of residence of the tenant, whom is given continuous occupancy of the Rebate

Property, under one or more leases, for a period, throughout which the unit is used as the primary place of residence of that individual, of at least one year.

V. **Context**

[12] In May 2019, the Appellant signed an Agreement of Purchase and Sale with Upshift Investments Inc. in view to purchase the Rebate Property. The first tentative closing date for the purchase and sale was October 28, 2020. In actuality, the possession and closing date for the Rebate Property among the purchaser and the seller took place on November 10, 2020. The parties agree that the November 10, 2020 date is the date the HST is payable in respect of the sale and purchase of the Rebate Property.

[13] During the construction period in 2020, the Appellant contacted a real estate agent to assist him and find prospective tenants for the Rebate Property. According to the Appellant, the search for a serious tenant was not necessarily an easy task. At some point in fall of 2020, the Agent proposed a tenant to the Appellant. The Appellant accepted the tenant's terms. On November 23, 2020, the parties entered into an Agreement to Lease the Rebate Property for a term of ten months commencing on December 1, 2020 and ending on September 30, 2021.

[14] The tenant's situation was such that the rental of the Rebate Property was linked to the construction of the tenant's own residence. It was difficult to predict exactly when the property would be delivered to the tenant. In any case, the tenant did not want to enter into a longer lease term than ten months, although nothing guaranteed that the tenant's residence would be delivered on time. In fact, the residence was made available earlier and the tenant left the Rebate Property premises after eight months, in July 2021. From then, the parties agreed to terminate the tenant's lease after eight months instead of ten as originally agreed on.

[15] Once informed of the first tenant's intention to terminate the lease earlier, the Appellant reached the same real estate agent to find a subsequent tenant. On June 17, 2021, the Appellant entered into a one-year lease with a new tenant, effective from August 1, 2021 to July 31, 2022. The new tenant renewed the terms of the lease after July 2022.

VI. **Analysis**

[16] The definitions of key words referred to in the New Housing Rebate regime set out in the *Excise Tax Act* are particularly relevant to resolve the issue in dispute.

[17] For the Appellant to benefit from the rebate in the present case, subsection (3) of section 256.2 of the *Excise Tax Act* lists multiple conditions that need to be met including that the Rebate Property must be at the particular time, being in the present case by virtue of various provisions in the *Excise Tax Act* the closing date on November 10, 2020, a qualifying residential unit of the Appellant.

[18] Subsection (1) of section 256.2 of the *Excise Tax Act* defines two terms that will narrow the issue in dispute. I refer to the definition of qualifying residential unit and the definition of the term first use found in the qualifying residential unit definition. As the issue is very narrow, I will reproduce below only the relevant wording of a portion of one condition in the definition of qualifying residential unit in subsection (1) of section 256.2 and subsequently give attention to the meaning of the words "first use". The Court considers this condition a central point in this case (note that I only reproduce one condition although other conditions must also be satisfied to meet the definition of qualifying residential unit). The text is as follows:

> qualifying residential unit of a person, at a particular time, means
>
> (a) a residential unit of which, at or immediately before the particular time, the person is the owner … or has possession as purchaser under an agreement of purchase and sale, …, where
>
> …
>
> (iii) it is the case, or can reasonably be expected by the person at the particular time to be the case, that the first use of the unit is or will be
>
> …
>
> > (B) as a place of residence of individuals, each of whom is given continuous occupancy of the unit, under one or more leases, for a period, throughout which the unit is used as the primary place of residence of that individual, of at least one year …

[19] For purposes herein, the term first use referred to in the extract above is also define in subsection (1) of section 256.2 of the *Excise Tax Act* to mean the first use of the unit after the construction of the residential unit.

[20] In short, considering the way the condition cited above about the first use of the Rebate Property is drafted, the Appellant must either be able to establish that on November 10, 2020 (Option 1) the Rebate Property is the primary place of residence of a tenant under a lease for a period of at least one year, or (Option 2) the situation on

November 10, 2020 is such that it can reasonably be expected by the Appellant that the first use of the Rebate Property will be the primary place of residence of a tenant under a lease for a period of at least one year.

[21] Based on the evidence introduced by the parties at the hearing, the Appellant was not able to confirm that the Rebate Property was on November 10, 2020 the primary place of residence of a tenant under a lease for a period of at least one year. This situation could be explained by the fact that no lease was signed on November 10, 2020.

[22] Therefore, the only possibility for the Appellant was Option 2, and demonstrates at the hearing that, on the balance of probabilities, the circumstances on November 10, 2020 were such that it was reasonable for the Appellant to expect that the first use of the Rebate Property will be the primary place of residence of a tenant under a lease for a period of at least one year.

[23] As for the circumstances existing on November 10, 2020 and could support the Appellant's position, only the Appellant and the Appellant's spouse testified. The real estate broker appointed earlier by the Appellant to recruit potential tenants and discuss with the prospects the rental terms for the Rebate Property did not testify, and neither did the tenant under the first lease. Therefore, to explain the possible circumstances, the evidence submitted at the hearing came exclusively from the testimony of the Appellant and the Appellant's spouse.

[24] The testimony of the Appellant and the testimony of the Appellant's spouse dealing specifically with the circumstances existing on or about November 10, 2020 in view to determine whether it was reasonable for the Appellant to expect that the first use of the Rebate Property will be the primary place of residence of a tenant under a lease for a period of at least one year were relatively brief.

[25] The Court notes the following about the statements and answers from the witnesses. First, the search for a tenant started earlier in the year 2020 as the closing date was anticipated to occur in late fall of 2020. Second, the earlier months in searching for a tenant were not encouraging. Third, the complex where the Rebate Property is located involves a substantial number of residential units that would essentially become available for renting on or about the same time as the Rebate Property, affecting the leasing opportunities. Fourth, the renting window was to start just before the holiday season and therefore not necessarily promising. Fifth, the acquisition of the Rebate Property will include a mortgage that will involve additional immediate financial obligations for the Appellant and limit the possible options for the

owners. Sixth, the lease was finalized on November 23, 2020, 13 days after the closing date, suggesting that discussions had taken place in the preceding days or weeks.

[26] When asked whether the market conditions requested flexibilities or whether fixed terms had to be met to accept a lease, the Appellant agreed that reasonable flexibility was more appropriate than being able to request strict terms and conditions. In other words, being able to accommodate was most likely more suitable to successfully retain a responsible and trusted tenant and be able to face the financial obligations relating to the purchase of the Rebate Property.

[27] The Court also notes that the lease signed 13 days after the closing date and possession of the Rebate Property, is essentially in line with the foregoing circumstances just described. The Appellant showed flexibility and accepted to accommodate the tenant with a ten-month lease. The possibility of a renewal or extension might have been possible; however, the terms of the lease are clear and the legal obligations for the tenant were strictly for a period of 10 months, not more. The factors behind the tenant's decision to seek a lease of that duration are not relevant to the analysis in this case.

[28] Moreover, the fact that the Appellant was successful with a subsequent tenant under a new lease once the first lease was terminated, unfortunately, cannot be of any assistance in the present case. The act is clear and only the first use after the construction is substantially completed is relevant. First does not include second. Only the circumstances under the first lease are relevant to satisfy the issue in dispute in this appeal.

[29] Among the assumptions made by the Respondent in the Reply, it was assumed by the Respondent that the Appellant provided insufficient evidence that the Rebate Property was used, or was reasonably expected to be used, as the primary residence of the first tenant for at least one year.

[30] The Court is of the view that the Appellant did not present evidence that was "credible and sufficiently convincing on a balance of probabilities" (*Hickman Motors Ltd.* v *Canada*, [1997] 2 SCR 336) to rebut this assumption. The Court will now discuss the test in two parts. Part I will the one-year term of the lease and Part II the primary place of residence.

[31] In the decision of *Melinte* (2008 TCC 185) it is stated in paragraph 18:

> In applying this to one individual, since the provision refers to the "continuous occupancy", it is necessary to determine the required period of "continuous occupancy". The only period of time that is referred to is "at least one year" (or the shorter period of time contemplated by this clause) and therefore this must be the period of occupancy that will satisfy this requirement. As well, throughout this period of at least one year (or the shorter period of time contemplated by this clause), the unit must be used as the primary place of residence of the particular individual.

[32] The Court believes that the evidence confirmed that the test cannot be satisfied in the present case. Option 1 was simply not possible to satisfy due to the fact that the first lease was signed after the closing date. As for Option 2, the comments made by the Appellant and his spouse support the flexibility that the situation required during the month of November 2020, the priority and the challenge to find a trusted tenant to start on good basis the couple's rental project were the driving goals, and not to close at all costs a lease with a minimum term of one year. This is in line with the fact that a 10-month lease was signed 13 days following the closing date. The Court does not take into account what could have been done or what was ideal but must consider what the evidence supported. And on that basis, the Court is not persuaded that the evidence supported, on the balance of probabilities, that the duration of the lease was a decisive factor and viewed or considered as being reasonably expected two weeks prior to a 10-month lease is entered into.

[33] The evidence at the hearing showed that the context existing around the closing date did not dictate that the Appellant and his spouse were able to prioritize all their possible goals. Maybe they knew at closing that the term of the lease would only be for 10 months. The evidence does not suggest any particular direction in this respect. However, the evidence supports that the Appellant was not able to reasonably believe that this particular objective of one year existed on or around the closing date. At best, expectations were then uncertain, and time was of the essence. And uncertainties are not sufficient to establish reasonable expectations. No other witness was heard that could have impacted this conclusion.

[34] In addition, as stated in paragraph 18 of the decision in *Melinte* cited above, throughout the period of at least one year, the residential unit must be used as the primary place of residence of the particular individual. This last statement is also part of the test that the Appellant was required to demonstrate on the balance of probabilities.

[35] It is generally accepted that the question whether a unit is a primary place of residence is a question of fact, determined on a case-by-case analysis. Criteria

indicative of a primary place of residence includes the mailing address; income tax (forms or returns); voting; municipal/school taxes; and telephone listing. These criteria are not exhaustive.

[36] As mentioned in *Fiducie* CHRY-CA (2008 TCC 423), under the wording of section 256.2 of the *Excise Tax Act*, an individual can possess no more than one primary place of residence. If the individual has more than one place of residence, the individual's more important one must be determined based on factual criteria. In addition to the criteria referred to in the previous paragraph, it can be considered the purpose of the stay, length of the stay, physical presence at the residence, the intention to use the residence as the primary residence, and the address appearing on the individual's personal records.

[37] The evidence in this case did not establish, on the balance of probabilities, that it could reasonably be expected that the tenant would continuously occupy the Rebate Property as the primary place of residence. This particular condition was just not addressed. No witness was heard to address this particular aspect.

VII. **Conclusion**

[38] The evidence at the hearing as presented, and as assessed by the Court, was not credible and sufficiently convincing on a balance of probabilities that the circumstances on November 10, 2020 were such that it was reasonable to expect that the first use of the Rebate Property will be continuously occupied as the primary place of residence of a tenant under a lease for a period of at least one year.

[39] Considering the foregoing, the Court has unfortunately no other choice than to dismiss the appeal, without costs.

Signed this 12th day of December 2025.

"J.M. Gagnon"

Gagnon J.

CITATION:	2025 TCC 187
COURT FILE NO.:	2024-2216(GST)I
STYLE OF CAUSE:	YOGESH SHARMA AND HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 4, 2025
REASONS FOR JUDGMENT BY:	The Honourable Justice Jean Marc Gagnon
DATE OF JUDGMENT:	December 12, 2025

APPEARANCES:

Agent for the Appellant:	Kamal Sharma
Counsel for the Respondent:	Kirsten Humphrey

COUNSEL OF RECORD:

For the Respondent:	Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Canada