Docket: 2024-2522(GST)I

BETWEEN:

SHIVDEV SINGH AND MANJU BALA,

Appellants,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on March 5, 2026 at Oakville, Ontario

Before: The Honourable Justice John A. Sorensen

Appearances:

Agent for the Appellant:	Surjit Mundi
Counsel for the Respondent:	Katherine McCarthy

JUDGMENT

The appeal is dismissed without costs.

Signed this 18th day of March 2026.

"J.A. Sorensen"

Sorensen J.

Citation: 2026 TCC 50
Date: 20260318
Docket: 2024-2522(GST)I

BETWEEN:

SHIVDEV SINGH AND MANJU BALA,

Appellants,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Sorensen J.

I. Overview

[1] The Appellants purchased a newly built residential unit in the city of Brampton, Ontario (the "**Property**") as an investment, and the first tenants occupied it under a six-month lease. Although the Property was rented more-or-less continuously since that time, the New Residential Rental Property Rebate ("**Rebate**") was denied, on the basis that the unit was not a "qualifying residential unit" pursuant to s. 256.2(1)(a)(iii)(B) of the *Excise Tax Act* (Canada) (the **"ETA"**).[1] Among other things, the provision mandates that the first use of a new residential unit must either be, or reasonably be expected to be, continuous occupation by tenants as their primary place of residence for at least one year. In this case, the "particular time" for assessing that expectation was when the first lease was made. The Appellants knew the first tenants intended to stay only six months, and there was no reasonable expectation of a one-year tenancy. Thus, the statutory requirement was not met.

II. Facts

[2] The facts are not in dispute. The Appellants bought the Property by way of an agreement of purchase and sale dated December 12, 2021. They bought it to rent it out. The occupancy date was June 22, 2022, and they leased it to their first tenants

[1] RSC 1985, c. E-15. All statutory references are to the ETA unless otherwise noted.

under a six-month lease from July 1 to December 31, 2022. Those tenants had a new home in progress, and after the end of the six-month term they moved out of the Property and into their new home. Although there can be uncertainty regarding the completion date of new builds, there was no evidence of any expectation that the tenants would stay at the Property longer than six months.

[3] No evidence was led concerning the specific date that construction of the Property was completed, nor in relation to the substantial completion of the complex. That said, it is safe to infer that construction was complete before the occupancy date. While deficiencies may need to be cured after occupancy, in a regulated space like housing it is hard to imagine a scenario in which individuals are permitted to occupy a residential unit that is not completed.

[4] The Appellants paid to the builder interim occupancy fees for the Property (sometimes described as phantom rent), until closing on July 12, 2023.

[5] As the first tenants' occupancy was ending, a new tenant signed a one-year lease effective on January 1, 2023, but she defaulted. A further new tenant moved in as of March 1, 2023, and has lived there ever since.

[6] In summary, the Property was purchased as a rental property, and has been rented continuously since the occupancy date up to today, but for a short gap that was beyond the Appellants' control. And yet, when the Appellants applied for the Rebate, it was denied by way of a notice of assessment dated October 4, 2023, because the Minister of National Revenue (the "**Minister**") concluded that the Property was not a qualifying residential unit of the Appellants, relying on s. 256.2(1)(a)(iii)(B). The reply stated that the Property was not a qualifying residential unit because it was neither a primary place of residence of an individual for a period of at least one year, nor did the Appellants have a reasonable expectation that it would be.

III. Analysis

[7] Several conditions must be met for a rental property to be a "qualifying residential unit" for Rebate purposes. Simply put and as relevant to the Appellants' case, a person's qualifying residential unit at a particular time is: a self-contained residence[2] that the person owns, leases, or has possession of under a purchase and

[2] Per the definitions in s. 256.2(1), a "self-contained residence" means a residential unit (a) that is a suite or room in a hotel, a motel, an inn, a boarding house or a lodging house or in a residence

sale agreement; and it is the case (or can reasonably be expected by the person to be the case at the particular time) that the first use of the unit is or will be as a residence of individuals, each of whom is given continuous occupancy of the unit under one or more leases, for a period of at least one year, throughout which the unit is used as the primary place of residence of the individual.

[8] Bocock J. provided a tidy summary in *12329905 Canada Ltd*.[3]:

> 16 The definition of "Qualifying residential unit" requires that it be 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 in accordance with 256.2(1)(a)(iii)(A) or (B). Presently, it is uncontested that clause (B) applies because such subclause, unlike (A) relates to non-owners or non-lessors (or the relatives of either). Subclause (B) requires:
>
> (a) the unit must be used as a place of residence of individuals;
>
> (b) each of whom is given continuous occupancy of the unit;
>
> (c) under one or more leases;
>
> (d) for a period;
>
> (e) throughout which the unit is used as the primary place of residence of that individual;
>
> (f) of at least one year (or the shorter period of time contemplated by the section).
>
> 17 Consequently, the requirements of subparagraph (iii) of the definition of "qualifying residential unit" will be met if either the first actual use or the reasonable expectation of a first use are consistent with the requirements of clauses (A) or (B);
>
> Since the requirements of paragraph (iii) of the definition of "qualifying residential unit" will be satisfied by either the actual first use or the reasonably expected first use determined under clause (A) or (B), the first step will be to determine what actual first use will qualify. The reasonably expected first use would simply be a

---

for students, seniors, individuals with a disability or other individuals; or (b) that contains private kitchen facilities, a private bath and a private living area.

[3] *12329905 Canada Ltd v The King*, 2024 TCC 115 ("***12329905 Canada***").

> reasonable expectation that the use would satisfy the requirements for the actual first use.[4]
>
> 18 Clause 256.2(1)(a)(iii) of the ETA provides that the taxpayer must have a reasonable expectation concerning the tenant occupying the residential unit for its first use "at a particular time". The Court is called upon to determine the point at which such a "particular time" occurred in order to assess the Appellant's requisite reasonable expectation of Tenant #1's lease.

[9] The "first use" definition is self-referential, but timing is included in the definition, so it is not quite circular:

> "first use", in respect of a residential unit, means the first use of the unit after the construction or last substantial renovation of the unit or, in the case of a unit that is situated in a multiple unit residential complex, of the complex or addition to the complex in which the residential unit is situated is substantially completed.

[10] Viewed in context, "use" must be as a residential unit. Even the most ingenious interpreter of statutory language would be hard pressed to find a meaning of "first" that does not accord with the common sense meaning "before all others", whether by way of order, timing or ranking. In the context of s. 256.2(1)(a)(iii)(B), first use means the first-in-time use of a property *qua* residential unit after its construction or last substantial renovation or the substantial completion of the multi-unit complex in which it is situated.

[11] What is the "particular time" contemplated by the definition? In *12329905 Canada*, Bocock J considered two arguments. The respondent argued that the "particular time" must be the time that tax became payable which, it argued, was the closing date or the date on which unit ownership transferred. The appellant argued that the "particular time" must be the date on which the lease with the first tenant was signed.

[12] Methods of statutory interpretation are instruments serving a purpose, not ends in themselves. If an exercise of applied statutory interpretation results in an impossible result based on the facts, a more workable model must be deployed. For example, if a first tenancy concluded before the ownership of a unit was transferred to the lessor, the "particular time" cannot be the date that title transferred. As Bocock J concluded in *12329905 Canada*, the "particular time" at which an appellant's reasonable expectation must be considered has to occur before the first tenant

---

[4] Here the judgment cites *Melinte v R*, 2008 TCC 185 at paragraph 16 ("**Melinte**").

vacated the residential unit.[5] Otherwise, the statutory scheme would not make any sense.[6]

[13] Turning to the Appellants' case, the status of the Property as a self-contained residence was undisputed, and at all relevant times the Appellants either owned or had possession of the Property under a purchase and sale agreement. It was undisputed that the Property was used as a place of residence of an individual (the first tenants), who had continuous occupancy of the Property under a lease throughout which term the Property was their primary place of residence. It was undisputed that the duration of that first lease was six months, which falls short of the one-year statutory requirement. Therefore, the sole issue upon which this appeal turns is whether, at the "particular time", the Appellants had a *reasonable expectation* that the first tenants would stay at least a year.

[14] In the circumstances of this case, the "particular time" in issue must be the time that the first lease was signed in June 2022. Did the Appellants have a reasonable expectation that the first tenants would stay a year or more? No. The testimony of Mr. Singh was candid – they did not expect that the first tenants would stay more than six months. It may have been reasonable to expect that the tenants' own pre-construction home may be delayed, or not. That is a factual question, and the only evidence was Mr. Singh's admission that they did not think the first tenants would stay on more than six months.

[15] Could it be argued that the July 12, 2023 closing date was the preferred "particular time" and could that reset the analysis to consider the long-term tenant who moved in as of March 1, 2023? No. That proposition conflicts with the constraint imposed by the "first use" criterion. The first use of the unit after construction[7] was completed was as a primary place of residence for the first tenants, who lived at the Property from July 1 to December 31, 2022. Therefore, even if I was tempted to localize the particular time to July 12, 2023, the first use principle forces an earlier date. Stated another way, the tenant who leased the Property starting March 1, 2023 was not making "first use" of the Property.

[16] The result in this case is dictated by the provisions of the ETA, but to a member of the public it may seem somewhat at odds with the policy goal of

---

[5] *12329905 Canada* at paragraphs 26 through 28.
[6] *Ibid*, at paragraph 21.
[7] As noted, I have safely inferred that construction on the Property had to have been completed by at least the June 2022 occupancy date.

encouraging the development of new long-term residential rental property in Canada. The Appellants did what a layperson would ordinarily expect would qualify. They purchased and leased out a rental property. Yes, the first tenants stayed six months, but the next *bona fide* tenant has resided at the Property for more than three years now.

[17] However, even though the Appellants conducted themselves in an intuitively reasonable manner, we cannot ignore that the ETA expresses overall policy goals in statutory language, and the exercise of drafting legislation often involves drawing lines *somewhere*.

[18] The line-drawing exercise in issue in this appeal involves the duration of the first occupancy. The Rebate program was not structured to incentivize the development of, for example, short-term vacation accommodations that may be rented through online rental marketplaces, or executive suites. Rather, the Rebate promotes the development of long-term rental property.[8] The scheme achieves that goal by establishing key parameters, including timing. Parliament's choice was to limit the Rebate to long-term rentals, relying on a one-year lease requirement, while allowing for fair outcomes based on reasonable expectations. Parliament could have chosen a shorter or longer period, but once Parliament has spoken it does not lie with the courts to override Parliamentary intention expressed in clear language, in order to seek to remedy a perceived injustice.[9]

[19] The last point above is supported by the Supreme Court of Canada's majority reasons in *Collins Family Trust.*[10] That Court affirmed that Parliament has imposed on the Minister a duty to administer and enforce fiscal law, and it must be applied strictly and without discretion.[11] This is not a punishment scheme for taxpayers, but rather a means to ensure that taxpayers have confidence in the tax system. Therefore, while results in tax disputes may in limited circumstances (and hopefully very rarely) intuitively seem unfair, a result imposed by statute is inescapable and not subject to the personal preferences or sympathies of decision-makers.

IV. Conclusion

---

[8] See *12329905 Canada* at paragraphs 29 to 32.
[9] See also *Nagendra v The King*, 2026 TCC 46 at paragraph 31.
[10] *Canada (Attorney General) v Collins Family Trust*, 2022 SCC 26. Although this case concerned income tax, the principles of s. 220(1) of the *Income Tax Act* (Canada) also apply to the ETA by way of ETA s. 275.
[11] The obvious limitation on this principle being taxpayer relief provisions, of course.

[20] For the foregoing reasons, the appeal is dismissed. There will be no order as to costs.

Signed this 18th day of March 2026.

"J.A. Sorensen"

Sorensen J.

CITATION:	2026 TCC 50
COURT FILE NO.:	2024-2522(GST)I
STYLE OF CAUSE:	SHIVDEV SINGH AND MANJU BALA AND HIS MAJESTY THE KING
PLACE OF HEARING:	Oakville, Ontario
DATE OF HEARING:	March 5, 2026
REASONS FOR JUDGMENT BY:	The Honourable Justice John A. Sorensen
DATE OF JUDGMENT:	March 18, 2026

APPEARANCES:

Agent for the Appellant:	Surjit Mundi
Counsel for the Respondent:	Katherine McCarthy

COUNSEL OF RECORD:

For the Appellant:

Name:	Surjit Mundi
Firm:	Mundi Accounting Services

For the Respondent:	Marie-Josée Hogue Deputy Attorney General of Canada Ottawa, Canada