

File No.: 04-1000-20-2024-700

February 11, 2025

s.22(1)

Dear s.22(1)

Re: **Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")**

I am responding to your request of November 27, 2024 under the ***Freedom of Information and Protection of Privacy Act*** for:

Record of all decisions made by the Vacancy Tax Review Panel ("VTRP") with the following information:

- 1. How the VTRP make their decisions;**
- 2. What evidence does the VTRP use to make their decisions.**

Date range: January 1, 2021 to August 27, 2024.

All responsive records are attached. Some information in the records has been severed (blacked out) under s.22(1) and s.22(3)(d) of the Act. You can read or download these sections here: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00.

Under Part 5 of the Act, you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your FOI request by writing to: Office of the Information & Privacy Commissioner, info@oipc.bc.ca or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number (2024-700); 2) a copy of this letter; 3) a copy of your original request; and 4) detailed reasons why you are seeking the review.

Yours truly,

[Signed by Cobi Falconer]

Cobi Falconer, MAS, MLIS, CIPP/C
Director, Access to Information & Privacy

If you have any questions, please email us at foi@vancouver.ca and we will respond to you as soon as possible. You may also contact 3-1-1 (604-873-7000) if you require accommodation or do not have access to email.

Encl. (Response package)

:pm

The City of Vancouver Vacancy Tax Review Panel Decision

Date: January 28, 2024

File Number: RC-2021-00069

Requestors: s.22(1)

Vacancy Reference Year: 2020

Civic Address: s.22(1)

Folio: s.22(1)

The requestor ("property owner") seeks an independent adjudicative review of a June 16, 2021 decision of the Vacancy Tax Review Officer which found that the Property was subject to the Vacancy Tax.

The Review Officer determined that there was insufficient evidence to determine that the Property was tenanted by an arm's length tenant for six months in the vacancy reference period (2020) for residential purposes. The Review Officer determined that if a property is listed for rent but the owner was unable find a suitable tenant, the vacancy tax would apply, as there was no exemption for properties due to an inability to find a tenant.

In accordance with the Vacancy Tax Review Adjudication process, the Panel has reviewed all the evidence submitted by both the City and the property owner. The Panel finds, on a balance of probabilities, that the Property does not qualify for an exemption under the *Vacancy Tax By-Law*. (the *By-Law*)

Procedural History

The property owners purchased the property, which is a condominium unit, in s.22(1). Their stated intention is to lease the property (as well as other properties) to s.22(1). They have engaged a management company to assist them in leasing the property, and successfully rented the property from the date of purchase until February 2020. Although they advertised the unit for rent and continuously reduced the price, they were unsuccessful in renting the unit until October 2020, when they entered into an agreement with a tenant for an occupancy date of December 1, 2020.

The property owners say they were unsuccessful in securing a tenant for several months because of the COVID-19 pandemic. They say that s.22(1) in 2020, but the Property remained vacant due to its location and the effects of the pandemic: "There was close to zero demand in the market for downtown condos as people were working from home and were moving out of downtown to suburbs where they can rent bigger places". In support of their declaration for an exemption, the property owners submitted their agreement with the property management company as well as copies of Canada Revenue Agency documents showing they had paid taxes on their rental income.

Although the property owners acknowledged that the property was not rented for a minimum of six months required for an exemption, they say that it was due to circumstances beyond their control.

The property owners requested a review of the Review Officer's decision under section 6.11 of the *By-Law*.

Analysis

File Number: RC-2021-00069

The Panel's task is to apply the relevant provisions of the *By-Law* and apply it to the facts of this request.

The *By-Law*, like all legislation, is to be interpreted according to the following principle:

Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (E. A. Driedger *The Construction of Statutes*, 1974, p. 67)

Section 3 of the *By-Law* sets out the exemptions from the vacancy tax.

While the Panel acknowledges that the property owners appeared to have done all they were able to rent the property in the time of the COVID-19 pandemic, I find no error in the determination of the Review Officer. The property owners acknowledge that the property was not tenanted for at least six months of the vacancy reference period. There is nothing in the *By-Law* that exempts a property from taxation because the property owner was unable to rent the property as a result of the COVID-19 pandemic, high vacancy rates or some other reason. They are considered vacant and subject to the Vacancy Tax.

I agree with the determination of the Review Officer that section 3 of the *By-Law* does not provide for an exemption from the vacancy tax for properties that the property owner is unable to rent.

Decision

Having reviewed the property owner's documents and submissions as well as the relevant sections of the *By-Law*, the Panel is not persuaded that the property owner is entitled to an exemption from taxation under the *By-law*.

Review Determination: DENIED



Panel: C. L. Roberts
Date: January 28, 2024

The City of Vancouver Vacancy Tax Review Panel Decision

Date: December 7, 2023

File Number: RC-2021-00074

Requestor: s.22(1)

Vacancy Reference Year: 2020

Civic Address: s.22(1)

Folio: s.22(1)

The requestors ("property owners") seek an independent adjudicative review of a June 16, 2021 decision of the Vacancy Tax Review Officer which determined that the Property was subject to the Vacancy Tax.

Following a review of the property owner's information, the Review Officer determined that the evidence was insufficient to establish that the property was occupied as the principal residence of an occupier or tenanted for at least six months of the vacancy reference period (2019). The Review Officer determined that there was no exemption for property that was empty for more than six months of the year solely because it was listed for sale.

In accordance with Vacancy Tax Review Adjudication process, the Panel has reviewed all the evidence submitted by both the City and the property owner. The Panel finds, on a balance of probabilities, that the Property does not qualify for an exemption under the relevant provision of the *Vacancy Tax By-Law*.

Background

The property owners purchased the Property on s.22(1). Prior to the purchase, the previous owners filed a declaration declaring that the Property was exempt from the Vacancy Tax. The previous owners submitted a multiple real estate listing contract demonstrating that the Property was listed for sale in s.22(1) and contended that the Property was vacant for more than 180 days during the vacancy reference period only because they were unable to sell it due to the health restrictions imposed by the COVID-19 pandemic. The City determined that this information did not support an exemption.

The property owners filed a complaint after receiving the Vacancy Tax bill. They relied on the documents submitted by the previous owners and provided no additional information.

On June 16, 2021, the Vacancy Tax Department informed the property owners that there was insufficient evidence to establish that the Property was occupied as the principal residence of an occupier or tenanted for at least six months of the vacancy reference year, or that the property was eligible for one of the exemptions in the *Vacancy Tax By-Law*. The Review Officer found that there was no exemption for property that is empty solely because it is listed for sale.

The Tax Department informed the property owner of the right to file a Notice of Complaint.

The property owners request a review of the Review Officer's decision under section 6.11 of the *By-Law*.

Analysis

File Number: RC-2021-00074

The Panel's task is to apply the relevant provisions of the *By-Law* and apply it to the facts of this request.

The *By-Law*, like all legislation, is to be interpreted according to the following principle:

Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (E. A. Driedger *The Construction of Statutes*, 1974, p. 67)

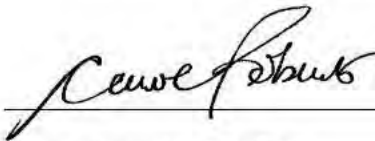
Section 3 of the *By-Law* sets out the exemptions from the vacancy tax. Section 3 does not provide for an exemption for properties which are vacant because they are listed for sale.

While the Panel has some sympathy for the new owners who appear to be facing a tax liability incurred by the previous owners, I find no error in the determination of the Review Officer. The information before the Review Officer was that the Property was vacant for over 180 days in the vacancy reference period solely because it was listed for sale. The current property owners have no ability to dispute that information. Properties which are not the principal residence of an occupier or tenanted for at least six months of the vacancy reference period do not qualify for an exemption. They are considered vacant and subject to the Vacancy Tax.

Decision

Having reviewed the property owners' documents and submissions as well as the relevant sections of the *By-Law*, the Panel is not persuaded that the property owners are entitled to an exemption from taxation under the *By-law*.

Review Determination: DENIED

A handwritten signature in black ink, appearing to read "Cecile Roberts", is written over a horizontal line.

Date: December 7, 2023

The City of Vancouver Vacancy Tax Review Panel Decision

Date: November 28, 2023

File Number: RC-2021-00085

Requestors: s.22(1)

Vacancy Reference Year: 2019

Civic Address: s.22(1)

Folio: s.22(1)

The requestors ("property owners") seek an independent adjudicative review of a May 5, 2021 decision of the Vacancy Tax Review Officer which determined that the Property was subject to the Vacancy Tax.

The Review Officer determined that the Property was unoccupied for more than six months in the vacancy reference period (2019) not because it was undergoing redevelopment or major renovation with permits, as asserted by the property owners, but because there had been no building permits in an issued status for at least six months of 2019, as prescribed by section 3.2(a) of the *Vacancy Tax By-Law*. (the *By-Law*)

In accordance with Vacancy Tax Review Adjudication process, the Panel has reviewed all the evidence submitted by both the City and the property owners. The Panel finds, on a balance of probabilities, that the Property does not qualify for an exemption under the relevant provision of the *By-Law*.

Background

The property owners declared the Property exempt from the Vacancy Tax on the basis that it was unoccupied for more than 180 days during the vacancy reference period to redevelop or safely carry out major renovations, under section 3.2 of the *By-Law*.

The Property was selected for an audit in July 2020. On August 4, 2020, the Vacancy Tax Department informed the property owners that City records indicated that there were no building permits issued in 2019. The Tax Department further noted that, based on the evidence provided to date, "we do not consider that this property was unoccupied for more than 180 days because the property was undergoing redevelopment or major renovations." The City asked the property owners to provide any other additional information to demonstrate that the property was exempt.

On August 12, 2020, the Vacancy Tax Department informed the property owners that the property status declaration was non-compliant, and the property was subject to the Vacancy tax. The Tax Department stated that, based on the information provided, the property did not qualify under section 3.2 on the basis that renovations were not being carried out with issued permits. The Tax Department informed the property owners of their right to file a Notice of Complaint.

s.22(1) submitted a complaint to the Review Officer under section 6.2 of the *By-Law*, which was accompanied by a statutory declaration and exhibits, contending that the property owners are entitled to an exemption under section 3.2. In summary, s.22(1) evidence was as follows:

s.22(1) purchased the property in s.22(1). They do not dispute that the property was vacant in 2019. They say that when they purchased the property, it had been vacant for many years, and the previous owner had obtained a building permit and commissioned a pre-demolition inspection and risk assessment report. s.22(1) chose not to build a home according to the previous owner's design and submitted a design for the new house to the City in March 2019. The plan was rejected due to engineering deficiencies. In April 2019, the property owners' builder advised s.22(1) that the City required applications for a house and laneway house to be made together. The property owners then discovered that the design for the laneway house could not be completed until it had the City's confirmation that a tree located on the southwest corner of the property could be removed. The builder's representative had several interactions with the City between May 2019 and September 2019 regarding the tree, and in October 2019, the property owners' builder applied for a permit for both a house and laneway house.

The property owners subsequently terminated their relationship with the builder and assumed conduct of the application process themselves. They obtained relevant documents from the builder approximately 5 weeks later. Their November 2019 application was rejected because of a bylaw amendment which changed the requirement for the basement and cellar depths. In December 2019, the owners submitted another building permit application for the house and laneway house. That application was also rejected based on a new version of a by-law which required land surveys and arborist reports to be conducted within 6 months, a change from the previous version which required the reports to be conducted within 12 months. The property owner submitted another application on December 20, 2019 which was again rejected.

The property owners assert that they did everything possible to diligently pursue their application to the City for a building permit, but that City employees consistently provided incorrect information to the owners' agents and took considerable time making significant decisions that were critical to their application.

The Review Officer determined that there were no building permits in an issued status for at least six months of 2019, and that the property was not eligible for the "Property undergoing redevelopment or major renovation" exemption in section 3.2(a) of the *Vacancy Tax By-Law*. The Review Officer concluded that "there is no exemption for a property that is unoccupied solely because the building is in a state of disrepair and not in a condition for people to live in unless it is undergoing redevelopment or renovation with an issued building permit pursuant to section 3.2(a) of the *Vacancy Tax By-Law*."

The property owners request a review of the Review Officer's decision under section 6.11 of the *By-Law*.

Analysis

The Panel's task is to apply the relevant provisions of the *By-Law* and apply it to the facts of this request.

The *By-Law*, like all legislation, is to be interpreted according to the following principle:

Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (E. A. Driedger *The Construction of Statutes*, 1974, p. 67)

Section 3 of the *By-Law* sets out the exemptions from the vacancy tax. Section 3.2 provides that a vacancy tax is not payable:

...If the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

- (a) Redevelop or safely carry out major renovations to the property:
 - i. *for which permits have been issued by the City in the vacancy reference period, and*
 - ii. *which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay. (emphasis added)*

The Panel accepts that s.22(1) genuinely intended to construct a house on the Property and that they worked diligently to obtain the necessary permits to do so. s.22(1) material sets out in detail the actions s.22(1) took following the purchase of the property and the delays they encountered in obtaining a permit.

Some of the delays were a result of rejected permit applications due to engineering deficiencies and by-law changes while others were a result of the property owners' decision to change the design of the house and to terminate their relationship with their builder. Those delays, while no doubt frustrating to the property owners, are not relevant to the interpretation of the *By-law*.

A plain reading of section 3.2 (a) of the *By-Law* requires, as indicated by the use of the word "and" in Section 3.2 (a), that both sub-paragraphs must be satisfied in order to qualify for an exemption.

There is no evidence that a permit had been issued by the City in the vacancy reference period, despite the efforts of s.22(1), and their contractors. While sympathetic to the property owners, the Panel has no ability to override the plain words of the *By-Law*.

Decision

Having reviewed the property owners' documents and submissions as well as the relevant sections of the *By-Law*, the Panel is not persuaded that the property owners are entitled to an exemption from taxation under section 3.2 of the *By-law*.

Review Determination: DENIED



Panel: C. L. Roberts

Date: November 28, 2023

**The City of Vancouver Vacancy
Tax Review Panel Decision**

Date: February 1, 2024

File Number: RC-2021-00092

Requestor: s.22(1)

Vacancy Reference Year: 2019

Civic Address: s.22(1)

Folio: s.22(1)

1. At the request of the Owner, represented by s.22(1), the Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the Owner claiming that the Vacancy Tax is not applicable to the Property for the 2019 Vacancy Reference Year. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Assessment of the Vacancy Tax and Claims for Exemption

2. The Vacancy Tax Bylaw No. 11674 (“**Bylaw**”) of the City of Vancouver imposes a Vacancy Tax on every parcel of taxable property in accordance with the Bylaw. Taxable property is defined to mean residential property that is vacant, not exempt from taxation under the Vancouver Charter (“**Charter**”), and not exempt from the Vacancy Tax under the Bylaw.
3. Section 1.2 of the Bylaw provides the following definitions that are required for understanding the application of the law to the facts herein:

“occupier” means a registered owner or a person who occupies residential property with the permission of the registered owner but is not a tenant or subtenant;

“principal residence” means the usual place where an individual lives, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver’s licenses, personal identification, vehicle registration and utility bills and, for the purposes of this Bylaw, a person may only have one principal residence;

“taxable property”, in relation to a vacancy tax, means residential property that is all of the following:

- (a) vacant property;
 - (b) not exempt from taxation under either section 373 or 396 of the Vancouver Charter;
- and
- (c) not exempt from the vacancy tax under this Bylaw;

4. Section 2.1 of the Bylaw provides that:

2.1 A vacancy tax shall be imposed on every parcel of taxable property in accordance with this Bylaw.

5. Section 2.2 of the Bylaw provides the following:

Residential property is considered to be unoccupied in the following circumstances:

- (a) the residential property is not the principal residence of an occupier; and
- (b) the residential property is not occupied for residential purposes by an arm's length tenant under a tenancy agreement, or by an arm's length subtenant under a sublease agreement, for a term of at least 30 consecutive days.

6. Section 2.3 of the Bylaw provides the following:

Residential property is considered to be vacant property if:

- (a) it has been unoccupied for more than six months during the vacancy reference period; or
- (b) it is deemed to be vacant property in accordance with this Bylaw.

7. Accordingly, a Vacancy Tax is imposed on every parcel of taxable property unless exempt or unoccupied for six months or less during the vacancy reference period.

8. The question in this case is not about an express exemption in the Bylaw. Rather it is whether the Owner has established that the Property was occupied as "the principal residence of an occupier" for more than six months in the 2019 Vacancy Reference Year.

9. Section 4.8 of the Bylaw provides that "The Collector of Taxes may require a registered owner to submit evidence to verify a property status declaration and the status of the property."

10. Section 4.9 of the Bylaw provides for types and form of information that a registered owner may be required to submit in support of an exemption from the Vacancy Tax. Section 4.10 sets out that if a registered owner of property has not provided a "completed property status declaration", the Collector of Taxes may require the registered owner "to provide information or submit evidence in accordance with 4.7, 4.8 or 4.9 of this Bylaw."

11. Section 7.1 of the Bylaw provides that property is deemed to be vacant in certain circumstances:

7.1 A parcel of residential property in respect of which a registered owner:

- (a) fails to make a property status declaration as required by this Bylaw;
- (b) makes a false property status declaration;

- (c) fails to provide information or to submit required evidence to the Collector of Taxes in accordance with this Bylaw, including, without limitation, the information or evidence that may be required pursuant to Sections 4.7, 4.8 or 4.9 of this Bylaw; or
- (d) provides false information or submits false evidence to the Collector of Taxes; is considered to be vacant property and is subject to the vacancy tax.

12. Section 4.12 of the Bylaw provides two paths for the Collector of Taxes. The first requires consideration of “the property status declaration, and all information and evidence collected in regards to a parcel of residential property” and a decision whether the property is subject to the Vacancy Tax. The second requires that “in the case of a parcel of residential property deemed to be vacant under this Bylaw,” the Collector of Taxes “must consider the parcel to be vacant property and subject to the vacancy tax.”
13. The law provides that a taxpayer seeking to displace factual assumptions made by the Collector of Taxes concerning a tax statute is usually deemed to have the burden of proof. Of course, that applies to factual matters and not to interpretation of the law. There is no burden on any party with respect to interpreting the law. That is the role of the adjudicator.
14. The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20. At para. 26, the court noted that “The fundamental rules on the allocation of evidentiary burden in this matter remain valid.... The taxpayer bears the burden of displacing the Minister’s factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law.” At para. 29, the court added that: “the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it — the duty to ascertain the correct interpretation lies with the court.”

Background Facts

15. This matter deals with whether the Vacancy Tax was shown not to be applicable to the Property for the 2019 Vacancy Reference Year.
16. The Owner has owned the Property since ^{s.22(1)}. It was tenanted for the 2017 Vacancy Reference Year and a declaration to that effect was filed and the Vacancy Tax was inapplicable for that year. For 2018, no declaration was filed, the tax was assessed, the Owner filed a Notice of Complaint, but then abandoned that. The foregoing establishes that the Owner was aware of the Vacancy Tax and the Bylaw and, specifically, knew of the requirement to make a proper declaration if an exemption was applicable.
17. The Owner did not initially make a declaration as to the Property’s status for the 2019 Vacancy Reference Year. As such, under the Bylaw, the tax applied.

18. After the City of Vancouver inquired, the Owner complained, made a declaration and provided some information and documents. The Owner's excuse for not making the required declaration initially was that they "could not log in to complete the form."
19. By its letter dated July 19, 2021, the City of Vancouver wrote to the Requestor and advised as follows:

We have received your Notice of Complaint regarding the Vacancy Tax for the property at s.22(1). We have completed an initial review of your file and do not consider that the information provided to date is sufficient and appropriate to establish that the residential property was the principal residence of a permitted occupant for at least six months in 2019. The documents submitted do not cover six months of the 2019 reference period. Please have one occupant submit one primary and three supporting documents covering six months of the 2019 reference period.

20. The Owner was asked to provide further documents and information by August 2, 2021 so as to support a claim that the Vacancy Tax was inapplicable.
21. The online questionnaire of the City of Vancouver to the Owner elicited a response indicating that the Property was the "principal residence" of a "friend or family member or other permitted occupant(s)" for more than 6 months of 2019.
22. In response to the question asking for details who occupied the property as principal residence, the Owner set out that s.22(1) did so from s.22(1) and that s.22(1) and s.22(1) did so from s.22(1).
23. Thus, it appears that the Owner took the position that having two sets of persons for two different periods during 2019 that totaled more than 6 months met the required 6 months duration of occupancy as a principal residence for the 2019 Vacancy Reference Year.
24. The Owner did not assert that any of the persons residing in the Property during the 2019 Vacancy Reference Period were tenants or sub-tenants. So, the focus here is on whether the Property was occupied as the "principal residence of an occupier" and that occupation was "for more than six months" during the 2019 Vacancy Reference Period.
25. As an initial observation, none of the persons identified by the Owner occupied the Property for more than six months of the 2019 Vacancy Reference Period. For that reason alone, if having at least one occupant make the Property their principal residence for more than six months was a requirement, it would appear that the claim that the property was not "vacant" as defined in the Bylaw must fail. There is a legal issue whether that is the correct view of how to interpret the Bylaw.

Plural or Singular Occupiers to Meet the More Than Six Months Threshold

26. The Owner appears to take the position that by accumulating two or more periods of occupation by different principal residents during the same year, the tax is inapplicable if the total period of occupation of those principal residents is six months or more.
27. That is not what the Bylaw says on its face. It says first that the Property “is considered to be unoccupied” if it is not “the principal residence of an occupier” and is considered to be vacant “if ... it has been unoccupied for more than six months during the vacancy reference period.”
28. One would have to invoke section 28(3) of the *Interpretation Act* to do what the Owner suggests. That section provides that “In an enactment, words in the singular include the plural, and words in the plural include the singular.”
29. Section 1 of the *Interpretation Act* provides that the word “enactment” includes “an Act or a regulation or a portion of an Act or regulation” and “regulation is defined to include bylaws made “in execution of a power conferred under an Act.”
30. Part XXX of the Vancouver Charter confers on the City of Vancouver the power to make bylaws for the Vacancy Tax. So, the chain of statutory provisions appears to apply such that section 28(3) of the *Interpretation Act* renders the phrase “principal residence of an occupier” (singular) to include “principal residence of occupiers” (plural).
31. Clearly if two or more persons occupy the Property as their personal residence at the same time, there would be no quibble. But could that provision allow for a succession of occupiers who each made the Property their personal residence, but with no overlapping of their occupation of the Property? It appears so, if one allows that the Property is then “the principal residence of occupiers” and that that applies “for more than six months during the vacancy reference period.”
32. It would appear that that is consonant with how long-term (i.e., more than 30 days) tenancies are to be treated under the Bylaw. Section 2.2(b) of the Bylaw provides that property “is considered to be unoccupied” if “the residential property is not occupied for residential purposes by an arm’s length tenant under a tenancy agreement, or by an arm’s length subtenant under a sublease agreement, for a term of at least 30 consecutive days.” If a property had several tenants with leases of “at least 30 consecutive days” during a Vacancy Reference Year and their occupation of the property totalled more than six months, then the purpose of the Bylaw encouraging the property’s use and occupation for residential purposes would seem to be served.
33. If that is so for occupation by way of qualifying tenancies, then it should be so for occupation by way of persons making the property their principal residence.

34. That said, section 2(1) of the *Interpretation Act* provides that “Every provision of this Act applies to every enactment, whether enacted before or after the commencement of this Act, unless a contrary intention appears in this Act or in the enactment.” So, section 28(3) creates, in essence, a presumption that can be displaced by reason of “a contrary intention” appearing in the Bylaw.
35. This approach to reading the provisions of the *Interpretation Act* found favor in *Hudson’s Bay Company v. British Columbia (Attorney General)*, 2009 BCSC 1730 at para. 24. See also *Bank of Montreal v. Graton*, 1987 CanLII 2436 (BC CA) at paras. 7-11. In the latter case, Esson, J.A. referred to sections 28(2) and 2(1) of the *Interpretation Act* and held at para. 11:
- “The contrary intention need not be found in express words, but may be inferred from the scheme of the enactment, its legislative history and other circumstances which surround the use of the word in question. Although the Interpretation Act does not use the words “the context otherwise requires”, the conclusion that a contrary intention appears may be based on the fact that the context otherwise requires.”
36. The thrust of Part XXX of the Vancouver Charter and of the Bylaw is to encourage use of residential properties as principal residences or for long-term rentals. It does not allow for occupation for six months or less by tenants with leases of less than 30 days to avoid the tax. It does not allow for occupation for six months or less by persons doing so as a principal residence to avoid the tax.
37. The Bylaw definition of principal residence supports that by providing that it must be the “usual place where an individual lives, makes their home and conducts their daily affairs.” It concludes by saying that “a person may only have one principal residence.” It does not say, however, that the occupation as a principal residence for six months or less counts for nothing.
38. The Panel thus considers that a cumulative approach to persons who occupied residential property as their principal residence can apply under the Bylaw. For example, if:
- (a) a first occupier had lived in the property for several years as their principal residence and continued doing so for, say, five months of the vacancy reference period in the last year they were there; and
 - (b) a second occupier comes along a couple of months later and establishes the property as their principal residence, living there for, say, another five months of that vacancy reference year and continues thereafter indefinitely occupying it as their principal residence,
- it is hard to see how the purposes and overall context of the Bylaw would not be served by finding that that rendered the Vacancy Tax inapplicable for that Vacancy Reference Period. The compelling feature on those facts would be that each occupier did indeed make the property their “usual place” of residence and that the total duration of having occupiers for whom the property was their principal residence was more than six months.

39. In this case, the Panel is not required to make a final determination whether such an accumulation of periods by more than one occupier would be sufficient in all instances to make the tax inapplicable for a Vacancy Reference Period. The reason is that the evidence provided here does not support a finding that the Property was occupied by a person or by persons who lived in it as their principal residence for more than six months of the 2019 Vacancy Reference Year.

Principal Residence

40. “Principal Residence” is, of course, defined in the Bylaws. The concept of principal residence loses meaning if one permits it to apply to someone who occupied, say, multiple residential properties during a given year for short periods and argued that each was their “principal residence.” It could not be said, in such a case, that the place was the person’s “usual place” of residence.
41. While involving somewhat different statutory language, the BC Court of Appeal decision in *Kamloops (City) v. Northland Properties Ltd.*, 2000 BCCA 344 (CanLII) is helpful by way of analogy here. In that case, Newbury, J.A., dealt with a zoning bylaw that allowed multiple residential units, but not a hotel. She found at para. 14 that a common definition of having a residence involved remaining in place “for a considerable length of time.” Duration was not the sole determinant though. At para. 17, she referenced income tax cases involving the meaning of “ordinarily resident” where

... many factors, in addition to the length of stay, are involved in determining “residence” — whether one lives out of a suitcase or brings all one’s possessions to the unit; whether one establishes roots and connections in the local community or remains only a sojourner; whether one is accompanied by family and is employed permanently or semi-permanently in the area; location of bank accounts and other records; etc.: see *Thomson v. Canada (M.N.R.)* 1946 CanLII 1 (SCC), [1946] S.C.R. 209.

42. The Bylaw definition here aims at clarifying what is required not just by adding the word “principal” to “residence”, by including “usual” in the definition given and by excluding persons who have a “principal residence” elsewhere.

Review of the Evidence Provided by the Owner

43. At the outset, it should be noted that the Owner’s approach to circumventing finding that the Property was “vacant” as defined in the Bylaw requires that both s.22(1) for the first period of time and s.22(1) for the second should be counted towards the more than six months threshold.
44. In this case, one occupier s.22(1) is said by the Owner to have lived in the Property for what seems to be s.22(1) and two others s.22(1) for s.22(1). No previous occupation as a principal residence by the first occupier is alleged. The two who assumed residence

after him appear to have continued to live in the Property after the end of the 2019 Vacancy Reference Year.

Alleged Principal Residence of s.22(1)

45. In the Panel's view, it stretches credibility to argue, based on the evidence here, that the Property was the "principal residence" and the "usual place" where s.22(1) lived. There is nothing to show what his intentions on arriving at or during his stay in the Property were. The fact he stayed just 76 days makes his occupation short term in nature. It fits better with being "transient" than with making the Property his "usual" place of living for an indefinite period. There is no evidence to show that his stay was for permanent employment or just for a limited duration. There is nothing to show any "roots or connections" were established by him in the local community. There is nothing to show bank accounts or other service supplier or similar records of others dealing with him as someone residing in the Property.
46. The Owner had notice that proving not just occupation of the Property, but also showing that the Property was occupied as the principal residence of the occupant(s) was required. The July 19, 2021 letter from the City of Vancouver set out not just that documentary evidence was required, but also details of the types and form of information that would be acceptable, tracking the list set out in section 4.9.
47. No primary or secondary documents were received concerning s.22(1). A statutory declaration from s.22(1) was provided. But it is very sparse. It sets out what the response to the questionnaire says, i.e., that he lived in the Property from s.22(1). It says on it that he did not own any other residential property. It says s.22(1) in Canada. Finally, it says that there were no "Canada Revenue Agency tax documents mailed to this property in the applicable vacancy reference period" as they were sent to s.22(1) address instead.
48. s.22(1) statutory declaration does say in the printed form that the Property was his principal residence. But no explanation for that statement is set out and no primary or secondary documentation boxes are checked off as being included by him. In context, it is not sufficient to establish what the Bylaw requires for "principal residence."
49. The lack of any primary or secondary documentation leads to an inference that none exists showing that the Property's address was, in fact, s.22(1) address and his "principal residence" for the period claimed during the 2019 Vacancy Reference Period.
50. Given that, the allegation that the Property was s.22(1) principal residence from s.22(1) fails. With that finding, so too does the Owner's claim that the Property was not "unoccupied" within the meaning of the Bylaw provision "for more than six months" in the 2019 Vacancy Reference Year. That is sufficient to dispose of this matter.

The Remaining Documentary Evidence Was Also Deficient

51. Even if the evidence of s.22(1) occupation of the Property could be said to meet the threshold of establishing that it was his “principal residence” for the period of time alleged and assuming that having sequential principal residents whose occupancy together totaled more than six months would satisfy the Bylaw, the Owner’s documentary evidence concerning s.22(1) occupancy was also insufficient.
52. It is notable as well that no primary document was received concerning s.22(1). The secondary documents that have her name on them do not support occupation as a principal residence in 2019 for six months or more.
53. As a primary identification document, the Owner provided a copy of a s.22(1) card for the s.22(1) was born early in s.22(1). The s.22(1) card date is for 2020 to 2025. No address appears on the card. It does not support occupation in 2019 or connect s.22(1) to the Property.
54. Also provided as a secondary document related to the s.22(1) Card was a copy of an s.22(1) s.22(1) for s.22(1) that set out that he had commenced living at the Property on s.22(1). The application was signed, but the signature is not identified and the application form is not dated. Obviously, someone signed the document s.22(1). The signature does not appear to be the same as s.22(1) signature on the Vacancy Tax statutory declaration that she provided for s.22(1).
55. A copy of the s.22(1) was provided, as was a page from it where s.22(1) wrote in the Property’s address as his address and s.22(1). It does not assist the purpose of getting other documentation showing that others recognized the alleged occupier of the Property as making their “usual place of living” the Property.
56. The residence of s.22(1) s.22(1) s.22(1). Their “usual” residence normally would track that of s.22(1). As such, one would expect that there would be more thorough documentation concerning s.22(1) situation if establishing his “principal residence” was being sought. There is nothing in the material here to explain that in this case.
57. Other secondary documents were provided, but were deficient and failed to prove what was alleged in the responses to the questionnaire:
 - (a) Copies of Telus invoices were addressed to the Property’s address, but had s.22(1) s.22(1) as addressee. Apparently, this referred to s.22(1) not the persons he set

out as the occupiers of the Property in 2019. These did not support the alleged residence in the Property of s.22(1).

(b) Copies of BC Hydro bills for July, August and September 2019 and January 2020 were provided that also had the Property's address, but had s.22(1) as addressee. These did not support the alleged residence in the Property of s.22(1).

(c) Bank of Montreal bank statements for October through December 2019 for an account in the name of s.22(1) were provided and had the Property's address on them. These are useful for that period to support s.22(1) using the address of the Property as her residence, but not going back to August 14, 2019.

(d) A "s.22(1)" for s.22(1) from s.22(1) was provided, apparently s.22(1). It was dated s.22(1). The document has the Property's address as s.22(1) "Correspondence Address." The reference to "Correspondence Address" is not the same as a "principal residence." Even if it did tend to establish support for her having a "principal residence" at the Property, its date covers only the last month or so in 2019.

Decision of the Vacancy Tax Review Officer

58. The City's Vacancy Tax Review Officer examined all of the evidence provided and considered the points set out by the Owner in the responses given. By a letter dated September 1, 2021, the officer informed the Owner that:

The Vacancy Tax Review Officer considers that the evidence provided was not sufficient to determine that this property was the principal residence of an occupier for at least six months in the vacancy reference period, and is considered vacant under the Vacancy Tax Bylaw.

A "principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this Bylaw, a person may only have one principal residence.

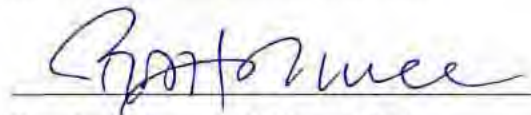
Summary and Conclusion

59. The Panel is of the view that the Vacancy Tax Review Officer's determination is both reasonable and correct. The Owner had several opportunities to present evidence supporting its claim for

exemption from the tax, but failed to do so with anything that could properly be considered proof of what the Bylaw requires.

60. Also, the failure to meet the requirements for documentation that the July 19, 2021 letter sets out provides a further basis for supporting the outcome here – failure to provide required documentation when requested means, under the Bylaw, that the Property is deemed to be vacant and the tax applies.
61. Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence does not establish that the Vacancy Tax does not apply to the Property for the 2019 Vacancy Reference Year.
62. The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax should be imposed on the Property for 2019.

Review Determination: DENIED



Panel: Robert D. Holmes, K.C.

Date: February 1, 2024

City of Vancouver Vacancy Tax Review Panel Decision

Date: December 13, 2023

File Number: RC-2021-00098

Requestor (Registered Owner): s.22(1)

Vacancy Reference Year: 2017

Civic Address: s.22(1)
s.22(1) ("Property")

Folio: s.22(1)

Introduction

1. This is a decision of a Vacancy Tax Review Panel of a review requested by a registered owner of real property in the City of Vancouver, who has received a determination of a Vacancy Tax review officer that the Property is subject to the Vacancy Tax.

Authority to Assess Tax

2. The Vacancy Tax By-Law No. 11674 ("By-law") of the City of Vancouver imposes a Vacancy Tax on every parcel of taxable property in accordance with the By-law. Taxable property is defined to mean residential property that is vacant, not exempt from taxation under the Vancouver Charter ("Charter"), and not exempt from the Vacancy Tax under the By-law. The Property is not exempt from taxation under the Charter.

3. S.2.3 of the By-law provides that residential property is considered to be vacant property if it has been unoccupied for more than six months during the vacancy reference period.

4. Accordingly, a Vacancy Tax is imposed on every parcel of taxable property unless exempt or unoccupied for six months or less during the vacancy reference period.

Background Facts

5. A property status declaration was made on behalf of the Owner that declared the Property as her principal residence between s.22(1) before beginning renovations on the Property. Prior to September, 2016, and after August, 2017, the Owner and her husband stated that they resided with s.22(1) and they chose not to update their identification cards, or redirect their mail and bills to the new address in the meantime, as they intended to move back to s.22(1) once renovations began.

6. The Owner was unable to provide a primary piece of evidence supporting her claim that she resided in the Property prior to commencing renovations. Utility bills supported the principal residence declaration but the consumption was low, and based upon that the City determined that the Property was not the principal residence of an occupier.

7. The Owner applied for building permits on August 30, 2017. A salvage and abatement permit was issued on November 22, 2017, which indicated that the scope of redevelopment or renovations was major in nature, requiring the home to be unoccupied for at least 6 months, but because the building permit was not issued prior to July 1, 2017, the planned renovations did not require the Property to be vacant for at least 6 months of that year. Ultimately all permits were cancelled due to inactivity or withdrawn.

8. In the course of complying with the requirements of issuance of a building permit, the Owner obtained a hazardous materials report in March, 2017, which disclosed the presence of asbestos in tape on the HVAC and heating registers, linoleum floor in the 2nd floor washroom, leveling compound on the wood in the 2nd floor washroom and in parging cement in the basement furnace area on a chimney. The consultant did not address whether the house was safe for occupancy, and in due course, upon request, declined to provide an opinion. The s.22(1) and maintained that holes were drilled in the walls for testing, and because the asbestos was friable, meaning that it crumbled to the touch, that the home was not safe for occupancy after March, 2017. However, if testing resulted in the removal or destruction of walls, floors or other structures within the building, this would be considered work without a permit, and as a result the testing was considered by the City to be non-invasive and did not require the Property to be unoccupied.

9. In accordance with s.6.2 of the By-law, the Owner submitted a complaint regarding the decision to impose the Vacancy Tax to a Vacancy Tax review officer, on the grounds set out in s.6.2(a) of the By-law, namely that an error or omission on the part of the City resulted in the imposition of the Vacancy Tax. The Vacancy Tax Review Officer concluded the review of the complaint and supporting documents that were provided, and determined that the Property was not the principal residence of an occupier for at least 6 months in the Vacancy Reference Period of 2017, and is considered vacant under the By-law.

Analysis of Legal Issues Governing Complaint

10. Principal Residence is defined in s.1.2 of the By-law, as “the usual place where an individual lives, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver’s licences, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence”.

11. The Review Panel is in agreement with the City that insufficient evidence has been provided to establish that the Property was occupied in 2017 prior to the issuance of the first permit related to redevelopment or renovation on November 22, 2017. The only evidence supporting occupancy was utility bills showing insufficient consumption to have been occupied.

12. S.3.2(a) of the By-law provides as follows:

3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

- (a) Redevelop or safely carry out major renovations to the property
 - i. For which permits have been issued by the City in the vacancy reference period, and
 - ii. Which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay.

13. The Owner provided a letter, two written statements, building plans and an invoice, but none of these documents confirm statements made by the Owner's representative, that the Property was the principal residence of the Owner prior to construction commencing. The statements explain the process for applying for permits as well as the work which was required prior to permit applications, however this does not support either the principal residence declaration or the redevelopment/renovation exemption.

14. A review of the information available indicates the Property was neither under redevelopment restricting occupancy for a minimum of six months nor established as a principal residence during the Vacancy Reference Period. In reference to the original declaration, the salvage and abatement permit was not issued until November, 2017. All other associated permits were cancelled or withdrawn due to inactivity prior to being acted upon.

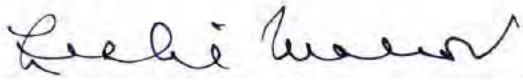
15. As a result the Property does not meet the requirements of S.3.2(a) of the By-law. While it is clear the Owner intended to redevelop or remove the Property, no work was completed during 2017 and the Property remained unoccupied for more than 6 months of the year.

16. In accordance with Vacancy Tax Review Adjudication processes, the Vacancy Tax Review Panel conducted a detailed, independent adjudicative review of all available evidence as submitted by both the City and the Property Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Decision

17. In conclusion, having reviewed all evidence put before it, including the Owner's documents and submissions, as well as having considered the relevant provisions of the By-law, the Panel is not persuaded on a balance of probabilities that the Property was the principal residence of an occupier in 2017 within the meaning of s.2 of the By-law, nor were permits issued to redevelop or renovate the Property that would have warranted it to be unoccupied for more than 6 months in 2017.

Review Determination: DENIED



Panel: Leslie E. Maerov

Date: December 13, 2023

The City of Vancouver Vacancy Tax Review Panel Decision

Date: February 21, 2024

File Number: RC-2022-00008

Requestor: s.22(1) ("Owner")

Vacancy Reference Period: 2018 calendar year

Civic Address: s.22(1)
("Property")

Folio: s.22(1)

OVERVIEW OF ISSUES:

1. This is a decision of a Vacancy Tax Review Panel ("Panel") of a review requested by the Owner who has received a determination of a Vacancy Tax Review Officer that the Property is subject to the Vacancy Tax.
2. The primary issue for determination by the Panel is whether the Owner has established the Property as her principal residence under the Vacancy Tax By-Law 11674 ("By-law") for the 2018 vacancy reference period ("2018 Period").
3. In addition, the Panel considers the:
 - a. validity of the assertion that the issuance of the Supplementary Vacancy Tax Notice for the 2018 Period is statute-barred; and
 - b. impact of the 2018 amendment to the definition of 'principal residence'.

AUTHORITY TO ASSESS TAX:

4. The By-law imposes a Vacancy Tax on every parcel of taxable property in accordance with the By-law. Taxable property is defined to mean residential property that is vacant, not exempt from taxation under the Vancouver Charter, and not exempt from the vacancy tax under the By-law.
5. Section 2.3 of the By-law provides that residential property is considered to be vacant property if it has been unoccupied for more than six months during the vacancy reference period; or, it is deemed to be vacant property in accordance with the By-law.
6. Accordingly, a Vacancy Tax is imposed on every parcel of taxable property unless exempt or unoccupied for six months or less during the vacancy reference period.

BACKGROUND FACTS:

7. The Owner is married to s.22(1)

8. s.22(1)
9. s.22(1)
10. s.22(1)
11. s.22(1)
12. s.22(1)
13. The Vancouver School District catchment schools associated with the Property are Queen Mary Elementary and Lord Byng Secondary, respectively.
14. The Vancouver School District catchment schools associated with the s.22(1) are Maple Grove Elementary and Magee Secondary, respectively.

PROCEDURAL HISTORY:

15. The Owner filed a property status declaration in accordance with sections 4.5 and 5.2 of the By-Law for the 2018 Period, declaring the Property to be 'occupied as the principal residence of the Homeowner'.
16. On October 5, 2020, the Vacancy Tax Department informed the Owner that their property status declaration had been selected for an audit and asked the Owner to provide information and evidence in support of their declaration, including completion of a specified questionnaire in its entirety (the "Audit").
17. By letter dated November 19, 2020, the Vacancy Tax Department reviewed additional information received from the Owner and noted that further evidence was required to support the Owner's declaration.

18. By letter dated December 3, 2020, the Owner's first lawyer provided additional information and advocated on Owner's behalf.
19. By letter dated December 7, 2020, the Vacancy Tax Department summarized the evidence provided to date, and advised that the City did not consider the Property to be the principal residence of the Owner for at least six months in 2018. The Owner was provided with a final deadline of December 21, 2020 to submit any further information which showed that the Property was exempt under the By-law.
20. By letter dated January 27, 2021, the Vacancy Tax Department concluded the Audit, determined the status declaration to be non-compliant resulting in the Property being subject to the Vacancy Tax.
21. On January 28, 2021, the City issued to the Owner a Supplementary Vacancy Tax Notice for the Property, in respect of the 2018 Period ("Supplementary Notice").
22. By letter dated April 27, 2021, the Owner's second lawyer ("Counsel") submitted pursuant to section 6.2, a notice of complaint ("NOC") regarding the decision to impose the Vacancy Tax. Based on a full reading of Counsel's April 27th letter, the Panel assumes that Counsel intended to submit the NOC pursuant to the grounds set out in subsection 6.2(a) of the By-law, namely that an error or omission on the part of the City resulted in the imposition of the Vacancy Tax.
23. By letter dated May 10, 2021, Counsel, relying on what appears to be subsection 6.2(a) of the By-law, submitted a supplementary notice of complaint on the Owner's behalf ("Supplementary NOC").
24. By clarification request letter dated May 31, 2021, the Review Officer advised Owner's representatives, including Counsel, that the information submitted via both the Audit and Notice of Complaint processes, had been reviewed and that the Review Officer did not consider the information provided to date was "sufficient and appropriate to establish that the residential property was the principal residence of a homeowner for at least six months in 2018".
25. Pursuant to section 6.6 of the By-law, the Review Officer sought further clarification from Counsel and the Owner inviting them to provide any of the information or evidence that is set out in sections 4.7, 4.8 and 4.9 of the By-law by a stated deadline or the Property would remain subject to the Vacancy Tax.
26. Counsel replied by letter dated June 17, 2021, again stating that the 2018 Period is statute-barred and cannot be assessed.
27. By second clarification request letter dated August 11, 2021, the Review Officer advised that "we do not consider the 2018 vacancy reference period to be statute-barred from being assessed"; and again,

invited Counsel and the Owner to provide, by the stated deadline of August 25, 2021, any of the information or evidence that is described in sections 4.7, 4.8 and 4.9 of the By-law.

28. Counsel replied by letter dated August 25, 2021.
29. By response letter dated October 5, 2021, the Review Officer stated, "I disagree with your interpretation of the vacancy tax by-law and do not consider that the 2018 vacancy reference year to be statute-barred as per section 4.14 of the vacancy tax by-law" and again set out an explanation as to why ("Response to Validity Assertion").
30. By letter dated November 1, 2021, the Owner was informed by the City that:

'[T]he Vacancy Tax Review Officer has concluded their review of your submitted complaint and all supporting documents provided in support of your Property Status Declaration. Based upon a review of your submitted information and evidence to support your complaint, the Vacancy Tax Review Officer has determined that your property remains subject to the Vacancy Tax' (the "Determination").
31. By letter dated January 27, 2022, and pursuant to section 6.11 of the By-law, Counsel requested a review of both the Determination and of the Review Officer's Response to Validity Assertion, which Counsel would like the Panel to treat as part of the Determination.

ANALYSIS:

32. In accordance with Vacancy Tax Review Adjudication processes, the Panel conducted a detailed, independent adjudicative review, involving all available evidence as submitted by both the City and the Owner claiming primary residence status. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.
33. The law provides that a taxpayer seeking to displace factual assumptions made by the Collector of Taxes concerning a tax statute is usually deemed to have the burden of proof. Of course, that applies to factual matters and not to interpretation of the law. There is no burden on any party with respect to interpreting the law. That is the role of the adjudicator, which in this Review Process is the Panel.
34. The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20. At para. 26, the court noted that "The fundamental rules on the allocation of evidentiary burden in this matter remain valid The taxpayer bears the burden of displacing the Minister's factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law." At para. 29, the

court added that: "the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it -- the duty to ascertain the correct interpretation lies with the court."

Statute-barred:

35. Counsel takes the position that the Supplementary Notice, issued pursuant to section 4.14, was issued out of time.
36. Counsel's argument set out in letters dated May 10, 2021, June 17, 2021, August 25, 2021 and January 27, 2022, is summarized as follows:
 - a. Section 1.2 defines the "tax year" to mean "the calendar year in which the tax is imposed". The Review Officer's assumption that the tax is "imposed" when a Vacancy Tax Notice or Supplementary Notice is issued is not accurate. Tax is "imposed" by the terms of the Bylaw—it is not "imposed" when a Notice is issued. The Notice merely confirms that the tax is owing under the Bylaw. See *The Queen v. Simard-Beaudry Inc.*, 71 DTC 5511 at 5515, paragraph 20, where the Federal Court confirmed that "the assessment does not create the debt, but is at most a confirmation of its existence". This was cited with approval in *Quinco Financial Inc. v. Her Majesty the Queen*, 2018 FCA 137 at paragraph 33 and also by the Canada Revenue Agency in Technical Interpretation 2010-038917117, "Reassessment of a bankrupt taxpayer", September 27, 2011.
 - b. In other words, the taxpayer is liable for tax from of [sic] the end of the tax year. [Counsel further cites paragraphs 2 and 3 from *The Queen v. Riendeau*, [1991] 2 C.T.C. 64 (FCA)].
 - c. Thus, for 2018, the tax is "imposed" by section 2.1 ("A vacancy tax shall be imposed on every parcel of taxable property in accordance with this By-law") and that "imposition" occurs as soon as the conditions in the Bylaw for 2018 are met. That would have been at the end of 2018. Accordingly, the Supplementary Notice was issued out of time, pursuant to section 4.14. This is confirmed by noting that section 4.14 requires the Collector of Taxes to mail a supplementary vacancy tax notice for the applicable "tax year". It does not say "for the applicable vacancy reference period". In this case, the Supplementary Notice was issued for 2018. That must have been a "tax year" or else the Notice would not have been authorized by section 4.14. As the Notice was issued in 2021, 2018 is the third "tax year" before 2021 and therefore, the Notice was statute-barred.
37. The position of the Review Officer set out in letters dated May 31, 2021, August 11, 2021, October 15, 2021 and November 1, 2021 is summarized as follows (emphasis added):

- a. Section 1.2 of the Vacancy Tax By-Law defines the following terms as follows:
 - i. “vacancy reference period” means the calendar year **prior** to the then applicable tax year (which implies the tax year is after the vacancy reference period);
 - ii. “tax year” means the calendar year in which the tax is imposed.
- b. The City cannot “impose” the vacancy tax **unless** (a) the owner has made a property status declaration that the property is vacant; (b) the owner fails to make a property status declaration by the declaration deadline and the property is deemed vacant; or (c) the property has been selected for audit and determined to be vacant under the vacancy tax by-law
- c. With respect to properties that are declared or deemed vacant, the vacancy tax is not “imposed” **until the declaration deadline has passed**. For the 2018 vacancy reference period, the tax was “imposed” one day after the deadline of February 4, 2019.
- d. Section 4.14 of the Vacancy Tax By-Law states the following:

“If the Collector of Taxes determines at any time after the 10th business day of March that a vacancy tax notice should have been assessed for a parcel of residential property for either the current tax year or one or both of the two most recent tax years to which this by-law applies, the Collector of Taxes must cause a supplementary vacancy tax notice to be mailed to the registered owner of the taxable property for the applicable tax year or years.”
- e. For the 2018 “vacancy reference period”, the tax is imposed in the 2019 “tax year”.
- f. The property was audited for the 2018 vacancy reference period via AU-2020-05699, determined to be non-compliant, and was issued a supplementary tax notice on January 28, 2021.
 - i. The current tax year is 2021, for the 2020 vacancy reference period.
 - ii. The first most recent tax year is 2020, for the 2019 vacancy reference period.
 - iii. The second recent tax year is 2019, for the 2018 vacancy reference period.

38. In considering Counsel’s reference to the principles set out in *Simard-Beaudry Inc.*, *Quinco*, and *Riendeau*, the Panel notes that there are other provincial and federal tax legislation where the referenced ‘tax year’, ‘taxation year’ or ‘income taxation year’ is actually the same calendar year used in

said legislation to verify status, calculate tax rates and impose the tax. In the *Speculation and Vacancy Tax Act*, SBC 2018, c 46, for example, the 'income taxation year' is the same calendar year that is used for verifying the 'owner', 'residential property' and tax rate and for imposing the tax payable for that year, despite the fact that the 'declaration' is filed by the owner and the tax calculated by the province early in the following calendar year.

39. The Panel finds however that with respect to this By-law, the "vacancy reference period" is the calendar year prior to the "tax year" which is the calendar year in which the vacancy tax is imposed. The former is used in the By-law to verify the status of the "residential property" and the "taxable property" and to calculate the vacancy tax rate in section 2.4.; while the latter is used in the By-law as the year in which the tax is imposed.
40. Although the Panel agrees with Counsel that "imposition" of the tax occurs as soon as the conditions in the By-law are met. The Panel finds that Counsel has overlooked a critical period along the timeline which operates in respect of the vacancy tax and this particular By-law.
41. Firstly, for the calendar year associated with any given vacancy reference period, which in this case was January 1, 2018 through and until December 31, 2018, the Collector of Taxes must mail out a property status declaration to every registered owner of residential property on or before the 31st day of December.
42. Then, as the Review Officer has noted, the City cannot "impose" the vacancy tax unless and until one of the following three events takes place, namely:
 - a. the registered owner has made a property status declaration in accordance with sections 4.5, 5.1 and 5.3, that the property is vacant; or,
 - b. the registered owner fails to make a property status declaration by the declaration deadline or makes a false declaration and the property is deemed vacant, in accordance with section 7.1 or,
 - c. the property status declaration has been selected for audit and the property determined to be vacant under the combined effect of sections 4.6, 4.7, 4.8 and 4.12.
43. Section 1.2 of the Vacancy Tax By-Law defines the following term as follows [emphasis added]:
 - a. "taxable property", in relation to a vacancy tax, means residential property that is all of the following:
 - i. vacant property [*whether declared, deemed or determined*];

- ii. not exempt from taxation under either section 373 or 396 of the Vancouver Charter;
and
- iii. not exempt from the vacancy tax under this by-law.

44. The Panel is in agreement with the Review Officer that, with respect to residential properties that are declared vacant, deemed vacant or determined vacant, the vacancy tax is not “imposed” until the declaration deadline has passed. The period within which a registered owner is required to file a declaration begins on the earlier of either actual receipt or deemed receipt (sec. 4.4) of the declaration and expires on the 2nd business day of the February following receipt of said declaration. Thus, the earliest day that the vacancy tax can be imposed is not on the day after a registered owner has filed their declaration, but rather it is on the **day after the deadline for filing such declarations expires**.
45. The combined effect of sections 4.6, 2.1 and 4.13, provides the Collector of Taxes with a window of time which begins the day after the 2nd business day of each February and continues until the 10th business day of the following March (“Review Period”), to review submitted declarations, to determine whether the residential property is taxable property and thus subject to vacancy tax and to mail out a vacancy tax notice.
46. With respect to the third event, being properties which have been selected for audit and determined to be vacant under the By-law, it is possible that said audit process could be initiated and completed within the Review Period, in which case a vacancy tax notice could theoretically be sent out before the end of the Review Period, being the 10th business day of March. However, the audit process will likely continue beyond or even more likely begin after the end of the Review Period, in which case the Collector of Taxes would, in accordance with section 4.14, cause a supplementary vacancy tax notice to be sent to the registered owner.
47. In this instance with the vacancy reference period being the 2018 calendar year, the deadline for submitting a property status declaration was February 4, 2019. The corresponding Review Period began February 5th and ended March 14, 2019.
48. Although the Panel agrees with Counsel that “imposition” of the tax occurs as soon as the conditions in the By-law are met. The Panel finds that in this instance that would not have been at the end of 2018, as Counsel has argued, but rather it would have taken place at the earliest in 2019 during the Review Period which ended on March 14, 2019. In any event, in actual fact the Audit commenced October 5, 2020, concluded January 27, 2021, determined the declaration to be non-compliant and the Supplementary Notice was issued January 28, 2021.

49. In summary, the Panel finds that for the 2018 “vacancy reference period”, the tax year was 2019, however, the tax in this instance was imposed in 2021, as illustrated below:
- a. The current tax year was 2021, for the 2020 vacancy reference period;
 - b. The first most recent tax year was 2020, for the 2019 vacancy reference period; and
 - c. The second recent tax year was 2019, for the 2018 vacancy reference period.
50. Although it is not lost on the Panel that the information printed in the top right-hand corner of the Supplementary Notice, which reads as follows:

**EMPTY HOMES TAX
2018 VACANCY TAX NOTICE**

could be misleading to the ordinary reader. Nevertheless, as Counsel has pointed out by reference to the cases cited, it is the By-law that establishes the tax and not the notice. The notice merely confirms that the tax is owing under the By-law.

51. Accordingly, the Panel agrees with the Review Officer that the facts do not support Counsel’s argument that the 2018 Period was statute-barred and thus the Supplementary Notice was not issued out of time.

Amendment to definition for Principal Residence:

52. Counsel’s argument set out in letters dated April 27, 2021 and January 27, 2022, is summarized as follows:
- a. The definition of "principal residence" was amended by Bylaw No. 12287, which added the words "and, for the purposes of this by-law, a person may only have one principal residence" (the "Amendment").
 - b. Bylaw No. 12287 was enacted on October 30, 2018, and came into force and took effect on that date.
 - c. Counsel cites *Canada v. Oxford Properties Group Inc.* 2018 FCA 30, at paragraph 86, to provide guidance for determining whether an amendment merely clarifies the prior law or changes the law.
 - d. Prior to the Amendment, a person was not prevented from having more than one principal residence. The definition of "principal residence", as it read prior to the Amendment, referred only to the "usual place where an individual lives, makes his or her home and conducts his or her daily affairs". A person could have two or more such "usual places".

- e. Counsel notes that the City's Administrative Report to City Council, dated November 6, 2016, was silent with regard to any limitation on the number of principal residences that a person may have in the description of the definition of "principal residence".
 - f. The Amendment represents a change in law as it introduced wording that restricted a person from having more than one principal residence for the purposes of the Bylaw.
 - g. Counsel finds the City's Administrative Report dated August 31, 2018, which described the Amendment as a minor change "to provide clarity" to be self-serving.
 - h. Counsel submits that the Amendment represents a change in law with force and effect as of October 30, 2018, and thus is not applicable to the prior months during the 2018 Period. By October 30, 2018, the Owner had occupied the Property for more than six months as a principal residence in the 2018 Period.
53. The position of the Review Officer and its application to this case is set out in a letter dated May 31, 2021:
- a. The October 30, 2018 Vacancy Tax Bylaw amendment made explicit the fact that a homeowner may only have one principal residence. The Bylaw did not change, and the definition of a principal residence provided by the bylaw since its November 16, 2016 inception has not been met via the evidence and information provided via audit.
54. Whether or not the Amendment amounts to a change in law or a mere clarification, the Panel agrees with the Review Officer that the Owner has not met the evidence threshold for establishing that the Property was the principal residence of the Owner during the 2018 period, as the defined term stood up to and including the day prior to the Amendment coming into force.

Principal Residence:

55. Taxpayers seeking an exemption from tax have the burden of establishing the necessary facts to justify the exemption. The Panel's task is to ensure that the Vacancy Tax Review Officer correctly interpreted the By-Law in light of those facts. (see *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20).
56. The By-Law, like all legislation, is to be interpreted according to the following principle:

Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (E. A. Driedger *The Construction of Statutes*, 1974, p. 67)

57. Furthermore, as recently articulated by the Supreme Court of British Columbia in *Belmont Nominee Ltd. v. Vancouver (City)* 2021 BCSC 2492 (at para. 71):

Administrative decision-makers interpreting legislative provisions must consider the text, context and purpose of the provisions in order to arrive at the authentic meaning of the provision: see *Hillier v. Canada (Attorney General)*, 2019 FCA 44.

58. The Panel has considered the intention of the By-Law, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver.

59. The relevant definition provision in the By-law states:

“principal residence” means **the usual place** where an individual lives, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver’s licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence [emphasis added].

60. Section 2.2 of the By-law states, in part:

Residential property is considered to be unoccupied in the following circumstances:

(a) the residential property is not the principal residence of an occupier.

61. Similar definitions of “principal residence” can be found in other legislation and has been considered by the courts. In *Farina v. Grant Administrator*, 2006 BCSC 1093, the court judicially reviewed a decision under the *Home Owner Grant Act*, RSBC 1996, c 194, holding the petitioner was not entitled to a grant on a property as it was not her “principal residence”. s.22(1)

62. The court said:

[22] I turn then to whether there is a reviewable error in this case. The definition of "principal residence" in the statute is problematic. It requires a determination of "the usual place where an individual makes his or her home." But for the use of the definite article, the definition is straightforward. If one were asked simply, "Where does the petitioner usually make her home?" the obvious answer would be s.22(1). The definition, however, demands that one determine a single place that is the principal residence, not a multitude of places that may be the principal residence at different times of the year. [emphasis added]

[23] The petitioner argues that the issue resolves itself into a simple question of law. Her counsel argues that the usual place an individual makes his or her home is the place where the individual makes his or her home for most of the time over the course of a year. He says that, as the petitioner spends s.22(1) and he says that the failure of the grant administrator to adhere to that definition amounted to jurisdictional error.

[24] With all due respect to counsel's arguments, I do not think the matter is that simple. There are many situations in which the place where a person makes his or her home for more than six months of the year is not the person's principal residence because it is not his or her usual home. For example, a student who lives in a dormitory during school terms will often have a different usual place where he or she makes his or her home. A person convalescing after an illness or accident may make his home in a hospital or rehabilitation clinic for many months without that place becoming his or her "usual home."

[25] The issue of what place is a usual home, it seems to me, is not a straightforward simple issue of law, but rather a mixed question of fact and law that must be assessed by considering the totality of the circumstances. Because it is a mixed question of fact and law in which factual inquiries are intensive, it seems to me that the decision of the grant administrator on the issue must be reviewed on a standard of reasonableness simpliciter.

[26] In the case at bar, the administrator took into account a number of factors in determining which of two residences was the usual place where the petitioner made her home. s.22(1) in the course of a year, the degree to which they were seasonal or year-round accommodations, and the degree to which the petitioner used each of the addresses as a base for her daily and business affairs. She looked, as well, at

factors such as the use of each residence as a mailing address, the banking arrangements of the petitioner, and the declarations that she made on residential insurance applications.

[27] It does not appear to me that any of the inquiries made by the grant administrator were unreasonable ...

63. The onus is on the Owner to prove, on a balance of probabilities, that the Property is their principal residence.
64. The Owner submits that sufficient evidence has been provided to establish that the Property was the Owner's principal residence during the 2018 Period. The Panel does not find that to be in fact the case.
65. The Panel is in agreement with the City that the only evidence submitted by the Owner during the Audit, which one might argue supports the Owner's 'Residence-Homeowner' declaration is the following:
 - a. Homeowners Insurance Certificate – The policy, which was issued or renewed on August 3, 2017 for a policy period commencing September 9, 2017 through to September 9, 2018, is valid for 8 months and 9 days in the 2018 Period and the name and the address of the registered owner and insured location match that of the Owner and the Property.
66. Despite the foregoing, the Panel is fully in agreement with both the Collector of Taxes and the Review Officer that overall, insufficient evidence has been provided to support the Owner's principal residence declaration for the Property during the 2018 Period. The evidence submitted by or on behalf of the Owner in respect of the 2018 Period which falls short of the mark is summarized below:
 - a. BC Driver's License ("DL") – DL was issued November 27, 2019, and is therefore valid for zero months in the 2018 Period. The address does not match that of the Property. The address reported on the DL is the 44th Ave Property;
 - b. ICBC Residential Address History – The Property does not appear on the Residential Address History. For the period July 10, 2012 through to January 10, 2014 the Owner's registered address was s.22(1) As of January 10, 2014, the Owner's registered address was the s.22(1) ;
 - c. ICBC vehicle insurance and registration – Insurance was found to be issued s.22(1) and valid for only 5 months and 20 days in the 2018 Period. Also, address does not match that of the Property. The address reported on the registration is the s.22(1) ;

- d. Fortis BC bills – Monthly statements for 2018 Period show virtually no gas used for an entire 12-month period, including colder months during fall and winter and no consistent reduction in consumption for months after the Owner allegedly moved out. Statements were issued to s.22(1) rather than the Owner and were mailed to the s.22(1) ;
- e. BC Hydro bills – Monthly statements for 2018 Period are not on an equal payment scheme; actual meter readings show modest usage; no significant increase during colder months; highest usage for calendar year is for August 8th to October 5th period – this period is 62% higher than previous year and yet a portion of this period Owner and Counsel have submitted that Owner and family had moved out. Portion of the higher usage for this specific period would be consistent with family using the Property in the Summer as noted by Counsel. One of the statements includes amount from a closed account with a service address at s.22(1) s.22(1) Statements were issued to s.22(1) rather than the Owner and were mailed to the s.22(1)
- f. Land Title Search – printed November 3, 2021, showing that on August 22, 2013 an application was received in respect of the s.22(1) , creating title in the name of the Owner and s.22(1) as the registered owners in fee simple, in joint tenancy;
- g. Land Title Search – printed November 3, 2021, showing that on August 26, 2013 an application was received in respect of the Property, creating title in the name of the Owner as the registered owner in fee simple and that a s.22(1) was registered the same day; and
- h. Land Title Search – printed November 3, 2021, showing that on May 5, 2016 an application was received in respect of the 44th Ave Property, transferring title the Owner & s.22(1) s.22(1) as the sole registered owner in fee simple and that a mortgage in favour of CIBC was registered the same day.

67. Further, the Panel is in agreement with the Collector of Taxes and the Review Officer that additional submissions of the Owner do not sufficiently support the Owner's principal residence declaration. Submissions set out in various sources, including Statutory Declarations and Letters from the first lawyer and from Counsel, are summarized as follows:

- a. Statutory Declaration deposited by the Owner on November 5, 2020 ("Owner Stat Dec"), stated that the Owner and s.22(1) had been residing in the Property s.22(1) since s.22(1) It further stated that the Twins moved into the s.22(1) The Owner further stated that water leaks and mould caused her to move out of the Property

in s.22(1) Finally, the Owner stated that most of her documentation is mailed the s.22(1) s.22(1)

- b. Statutory Declaration deposed by the Owner's s.22(1) s.22(1)

- c. Letter from first lawyer dated December 3, 2020 – stated that s.22(1) managed the Owner's s.22(1)

- d. Counsel's letter dated April 27, 2021, notes that when the Property was purchased in s.22(1) s.22(1)

68. Relying on the Land Title Searches provided by the Owner, the Panel finds that the 44th Ave Property s.22(1)

69. Counsel submits that upon its purchase the Owner and s.22(1) s.22(1)

70. Relying on the ICBC Residential Address History provided by the Owner, the Panel finds that from at s.22(1)

[REDACTED]

71. The Panel accepts that it may have been the family's intention to relocate to the Property upon its purchase, however the Panel agrees with the Review Officer that there is not sufficient evidence that such a relocation actually took place, nor that the Owner lived continuously at the Property from s.22(1) as has been suggested by Counsel.
72. As noted in the Farina case, an analysis of whether the Owner has made the Property their principal residence in 2018 is a mixed question of fact and law in which thorough factual inquiries are to be made.
73. Counsel submits in the letter dated April 27, 2021 that the Owner s.22(1) s.22(1)
- [REDACTED]
74. The definition of "principal residence" requires a determination of "the usual place where an individual lives, makes their home and conducts their daily affairs". The Panel is of the view that even before the 2018 Amendment, the definition required that one determine a single place that is the principal residence, not a multitude of places that may be the principal residence at different times of the year.
75. The Panel finds the conclusions made on the factual material during the Audit and by the Review Officer were reasoned. The Panel can review all the factual material afresh and based on that material, both documentary and in the statements of the Owner, the Panel concludes that the Owner has not established the Property as their principal residence for the 2018 Period.

FINAL DETERMINATION:

76. In conclusion, having reviewed and considered all evidence put before it in this case, including the Owner's documents and own submissions and that of the Owner's first lawyer and Counsel, and having considered the relevant provisions of the By-law, the Panel finds that the Supplementary Notice was not issued out of time and is not persuaded on a balance of probabilities, that for the vacancy reference period of 2018, sufficient consistent evidence was submitted by the Owner to substantiate a principal residence status declaration.
77. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax **SHOULD** be imposed on the Property.

Review Determination: DENIED



Panel: Arlene H. Henry, KC

Date: February 21, 2024

The City of Vancouver Vacancy Tax Review Panel Decision

Date: December 21, 2023

File Number: RC-2022-00018

Requestors: s.22(1)

Vacancy Reference Year: 2019

Civic Address: s.22(1)

Folio: s.22(1)

Introduction and Overview

At the request of the property owners (the "Property Owners"), the Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the Property Owners claiming exemption from Vacancy Tax for the Property for the 2019 Vacancy Reference Year. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

This case is about whether the Property Owners have established that the Property was occupied for more than 6 months in the 2019 Vacancy Reference Year. Communications with the City about the Vacancy Tax were conducted by one of the Property Owners, s.22(1)

Background

The Property Owners filed a declaration for the 2018 Vacancy Reference Year and for the 2020 Vacancy Reference Year. None was filed for the 2019 Vacancy Reference Year.

Section 4.5 of the Bylaw requires that:

For each real property tax folio, a registered owner or his or her agent or authorized representative must complete and return only one property status declaration to the City in the form and manner required by the City on or before the 2nd business day of the February following the receipt of the property status declaration form or instructions to make the property status declaration.

The Property Owners complained about the Property being treated as vacant and advised that their failure to file a timely declaration was due to a mistake on their part, saying, "I was confused and thought the 2020 declaration was for the 2019 year."

The City's staff asked s.22(1) for further information.

As matters developed, the Property Owners' position was that s.22(1) and that therefore the Property was exempt from the Vacancy Tax.

The City's Vacancy Tax Department asked for confirmation of that statement, referring to the Bylaw's provisions concerning documents and information in support showing that the Property was occupied.

Documents and Information Provided by the Property Owners

The Property Owners provided some materials, albeit sporadically and after much prodding by the City's audit staff. There appear to have been 11 contacts made by the City from June 26 to July 2, 2021 to get information or clarification. Sometimes information was supplied. Other times, apparently not and requests were reiterated.

In the course of those contacts, s.22(1)

s.22(1)

s.22(1)

None are in evidence.

The Vacancy Tax Bylaw provides this definition of occupier: ““occupier” means a registered owner or a person who occupies residential property with the permission of the registered owner but is not a tenant or subtenant.”

If satisfactory evidence had been provided showing that s.22(1) of the Property Owners for the 2019 Vacancy Reference Year, that would likely have led to a determination in favor of the Property Owners. Unfortunately, that did not happen.

Among the documents provided were Telus bills, but those did not establish that s.22(1)

s.22(1) But that person did not start working until 2020.

Some emails and an invoice for warranty work done by Onni (apparently, the developer of the Property) were produced. But those do not show s.22(1). Further, an invoice supplied has someone else signing an acknowledgement of the work done on the Property.

A copy of page 2 of 2 of the ICBC vehicle insurance documents covering the 2019 Vacancy Reference Year were produced. They had s.22(1) as addressee and the Property's address on it. That much helps the Property Owners' case.

But no explanation was given for not providing page 1 of 2 for these documents. Also, there are “Agent's Notes” on page 2 of 2 indicating the “DL” (Drivers Licence) was “sighted” (presumably meaning it was examined) and that s.22(1) explained and reviewed.”

In response to inquiries about s.22(1), a copy of s.22(1) was not the person held out to be the "occupier" of the Property and s.22(1) address on it was not the Property's address.

Also, s.22(1) so as to make sensible the Agent's Notes quoted above. It is odd that the ICBC vehicle insurance was for "s.22(1)", but no copy of a driver's licence "sighted" to get that insurance was produced.

In answer to an inquiry from the City staff, s.22(1) spoke with City staff on June 30, 2021 and advised that s.22(1)

That is at least somewhat inconsistent with the ICBC vehicle insurance documents that had been put forward.

The rest of the materials were either from another Vacancy Reference Year, did not have s.22(1) on them, but rather one of the Property Owners, or were addressed to other locations than the Property's address.

Vacancy Tax Review Officer's Requests for Further Information and Documents

All of this was unsatisfactory. From the initial failure to file a declaration through to the scattered manner that documents and information were presented, the situation led the Vacancy Tax Review Officer to have to consider what other source of information or confirmation of information informally presented would assist.

Letters and emails dated October 12, 2021, November 7, 2021 and December 15, 2021 were sent to the Property Owners by the Vacancy Tax Review Officer requesting further information and documentary support for the position the Property Owners were taking.

Deadlines for responding were set out in each letter, being October 26, 2021, November 22, 2021 and January 7, 2022 respectively.

The December 15, 2021 message to the Property Owners stated that January 7, 2022 was the "final deadline."

No response was forthcoming to these requests.

In these letters from the City to the Property Owners, the Vacancy Tax Review Officer advised the Property Owners concerning the results of the City's review of materials that had been submitted:

To date, we consider the following evidence to meet our secondary document requirements (includes name of registered owner, property's mailing address and spans at least six months of 2019 / dated in 2019):

- ICBC Vehicle Insurance Policies effective August 8th 2018 to August 7th 2019, and August 8th 2019 to August 7th 2020 listing s.22(1) as the owner and the property as the location address.

The other documents provided do not fully meet our secondary evidence requirements:

- Telus invoices – account owner and mailing address does not match occupant name or property address
- BC Hydro invoices – account owner and mailing address does not match occupant name or property address.
- Shoppers Drug Mart Prescription History – print date is in 2021
- Sleep Country Invoice – issue date is in 2018
- Dyson Warranty Email – issue date is in 2020
- Home Insurance Invoice / Policy – name insured does not match occupant name

As a consequence, the Vacancy Tax Review Officer determined that further evidence was required in order to establish that the Property was not vacant within the meaning of the Bylaw. The Vacancy Tax Review Officer then set out this request in each of the letters:

As you have not been able to provide the standard 1 primary (BCDL, BCID, CRA Notice of Assessment) and 3 secondary documents previously requested, please provide the following:

- Statutory Affidavit that states the following:
- The period of time for which the owner s.22(1) was occupying the property as their principal residence
- Explanation / Reason(s) why you are not able to provide the usual primary and secondary documents

The Panel finds that the Vacancy Tax Review Officer's analysis of the materials provided was accurate and that the request made for an affidavit setting out the information just noted was reasonable. Such a request is authorized by section 6.6 and 4.9(b) of the Bylaw. Section 6.7 states that:

6.7 The vacancy tax review officer may refuse a complaint if the registered owner or complainant fails to comply with the provisions of section 6.3, 6.5 or 6.6 of this by-law.

In passing, the Panel notes that the phrase "Statutory Affidavit" is not exactly the language of the Bylaw. Section 4.9(b) provides that the Chief Collector of Taxes may request "statutory declarations or affidavits." Section 6.6 provides that the Vacancy Tax Review Officer may do likewise.

The *Evidence Act* of BC does set out what a statutory declaration is and does refer to the use of affidavits in various proceedings, including presumably the current one.

In the Panel's view, while it would be preferable to track the language of the Bylaw, there is no basis for suggesting any confusion or attempt to mislead with the phrase actually used.

The Property Owners could not have been in any doubt that they received several requests for sworn or affirmed evidence explaining the facts on which they relied for the claim that the Property was "occupied" during the 2019 Vacancy Reference Year.

There is no suggestion in the record here that the Property Owners expressed any uncertainty about what was requested and required of them.

The request obviously required that sworn or solemnly affirmed evidence be provided. The rather scattered and insufficient documentary evidence and the unsworn statements given by s.22(1) were appropriately not regarded by the Vacancy Tax Review Officer as sufficient.

The failure of the Property Owners to provide a statutory declaration or affidavit when requested requires consideration of certain provisions of the Vacancy Tax Bylaw. The failure to explain why they were not doing so ought also to be considered.

Vacancy Tax Review Officer's January 19, 2022 Determination Letter

On January 19, 2022, the City sent a letter to the Property Owners advising that its Vacancy Tax Review Officer had determined that the property remained subject to the tax:

The Vacancy Tax Review Officer considers that the evidence provided was not sufficient to determine that this property was the principal residence of an occupier for at least six months in the vacancy reference period, and is considered vacant under the Vacancy Tax By-Law.

A "principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence.

Multiple attempts by the City to request additional evidence were not responded to within the time frames provided.

In the Panel's opinion, the Vacancy Tax Review Officer acted reasonably and was correct in making those determinations. The evidence provided was not sufficient to determine that the Property was the principal residence of an occupier for at least six months in the 2019 Vacancy Reference Year. As a consequence, the Property was appropriately considered to be vacant.

That is so without regard to the deeming provisions and to the law relating to adverse inferences. The law relating to those will be set out shortly as it reinforces the conclusions reached here. Even if, contrary to what has already been said, it were possible to regard the evidence submitted as amounting to a *prima facie* case for the Property Owners, that is undermined by their failure to respond to requests, particularly for sworn or affirmed evidence.

Based on the evidence submitted, there was simply not enough to show that the alleged occupier here s.22(1) did indeed have the Property as his "principal residence" in the 2019 Vacancy Reference Year.

s.22(1)

There is little in the way of documentation showing his name at the Property's address. That little is comprised of the ICBC documentation. There are substantial difficulties with that, however, given that only part of the document was produced, the references in it to s.22(1) instead with another address on it and the lack of confirmatory evidence generally, all tend to the conclusion that the Property Owners failed to establish their case.

Deeming Provisions

The deeming provisions of the Bylaw should be considered. The Panel starts this part of the analysis of this case by noting section 2.3 of the Bylaw's deeming provision:

- 2.3 Residential property is considered to be vacant property if:
- (a) it has been unoccupied for more than six months during the vacancy reference period; or
 - (b) it is deemed to be vacant property in accordance with this by-law.

Section 4.12 provides that if property is deemed to be vacant in accordance with a bylaw provision that Chief Collector of Taxes "must consider the parcel to be vacant property and subject to the vacancy tax."

4.12 The Collector of Taxes must review the property status declaration, and all information and evidence collected in regards to a parcel of residential property and must determine whether or not the parcel is taxable property that is subject to the vacancy tax, except that, in the case of a parcel of residential property deemed to be vacant under this by-law, the Collector of Taxes must consider the parcel to be vacant property and subject to the vacancy tax.

Section 7 of the Bylaw deals with "Deemed Vacancy" and sets out the following:

7.1 A parcel of residential property in respect of which a registered owner:

- (a) fails to make a property status declaration as required by this by-law;
- (b) makes a false property status declaration;
- (c) fails to provide information or to submit required evidence to the Collector of Taxes in accordance with this by-law, including, without limitation, the information or evidence that may be required pursuant to Sections 4.7, 4.8 or 4.9 of this by-law; or
- (d) provides false information or submits false evidence to the Collector of Taxes;

is considered to be vacant property and is subject to the vacancy tax.

The note by the Vacancy Tax Review Officer that additional information was not provided in response to requests, provides an additional basis for rejecting the Property Owner's complaint and finding the Property vacant. The Bylaw provides that in such circumstances as exist here, property is "deemed", or "must be considered" or "is considered" to be vacant. That accords with the overall structure, purpose and intent of the Bylaw.

The law relating to deeming provisions allows for the word "deemed" to be treated as either meaning "conclusively deemed" or "rebuttably deemed." The question which is to be applied depends on context and is, largely, a matter of statutory interpretation.

For example, in *St. Peter's Evangelical Lutheran Church v. Ottawa*, 1982 CanLII 60 (SCC), [1982] 2 SCR 616, McIntyre, J., for the Supreme Court of Canada explained it thus at p. 629:

It is true, of course, that the words 'deemed' or 'deeming' do not always import a conclusive deeming into a statutory scheme. The word must be construed in the entire context of the statute concerned.

The Bylaw directs that the Chief Collector of Taxes "must consider" property vacant if there is a failure to respond with information, including that spelled out in Bylaw section 4.9(c) to provide a statutory declaration or affidavit when requested, that would tend to indicate that the deeming provision in the Bylaw is meant to be conclusive. The absence of the word "must" in section 7.1 does not really detract from this given the Bylaw's language as a whole.

On the other hand, the Vacancy Tax Review Officer, when dealing with a complaint by property owners concerning an initial determination by the City's Vacancy Tax Department that property is vacant, may make a request under section 4.9(c) for the same thing. If one is provided, that suggests that it should be considered and that an earlier failure to provide one is not conclusive. The Vacancy Tax Review Officer could, therefore, make a different determination than that of the "Collector of Taxes."

If no statutory declaration or affidavit is provided to the Vacancy Tax Review Officer, however, they "may refuse" the complaint of the property owner, pursuant to section 6.7. That would leave in place the initial determination that the property was vacant. But the word "may" suggests that the Vacancy Tax Review Officer may decide that the property was not vacant if the evidence in its totality leads the Vacancy Tax Review Officer to that conclusion.

Adverse Inference

Failure to provide a statutory declaration or affidavit is a significant point. The Bylaw provides for consequences for it. Principles in the common law assist in understanding why that is so and why an adverse inference is sometimes called for and applied.

Obviously, such evidence is in the control and power of the Property Owners to provide. Not providing it requires consideration why and whether an adverse inference should be drawn against their case.

They have the burden of proof to establish that the Property is exempt from the tax. Their refusal or failure to provide evidence in the manner and form that the Bylaw permits the Vacancy Tax Review

Officer to request thus leads to a question why. Where, as here, there is no explanation offered, the seriousness of the failure is compounded.

Some cases and authorities have noted, however, that one only gets to an adverse inference if, as Lederman puts it in his text:

“§6.450 An adverse inference should be drawn only after a *prima facie* case has been established by the party bearing the burden of proof.”

This is quoted in *Fietz v. The Queen*, 2011 TCC 493 at paras. 39-40, affirmed at 2013 FCA 32. Here, of course, neither the Vacancy Tax Review Officer nor this Panel have found that a “prima facie case has been established” by the Property Owners. The Property Owners have the burden of proof.

Newbury, J.A., for the BC Court of Appeal in *Rohl v. British Columbia (Superintendent of Motor Vehicles)* 2018 BCCA 316 at para. 1 discusses the law relating to drawing adverse inferences;

[1] Since the scope and effect of the ‘adverse inference’ doctrine are often misunderstood, I begin with the formulation offered by S.N. Lederman, A.W. Bryant, and M.K. Fuerst in *The Law of Evidence in Canada* (4th ed., 2009):

In civil cases, an unfavourable inference can be drawn when, in the absence of an explanation, a party litigant does not testify, or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist that party. In the same vein, an adverse inference may be drawn against a party who does not call a material witness over whom he or she has exclusive control and does not explain it away. Such failure amounts to an implied admission that the evidence of the absent witness would be contrary to the parties’ case, or at least would not support it.

...

A more succinct definition may be found in Donald Brown, *Civil Appeals* (looseleaf):

An adverse inference may be drawn when, without explanation, a party does not give evidence or fails to call a witness who in the circumstances would be expected to favour the party and the witness would have knowledge of the facts in dispute. In such circumstances, the failure to call the witness or give testimony is seen as akin to an admission that the evidence would have been contrary to the party’s case, or at least would not support it. [At § 13.2131.]

[2] In *R. v. Jolivet* 2000 SCC 29 at para. 25, Binnie J. for the Court noted that the general rule in civil cases regarding the drawing of an adverse inference from a failure to tender a witness can be traced back at least to *Blatch v. Archer* (1774), 1 Cowp. 63, 98 E.R. 969 at p. 65, where Lord Mansfield stated:

It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted. [At 65.]

Here, it was clearly within the power of the Property Owners to provide their own affidavit or affidavits swearing or affirming to their whole account of whether s.22(1) was indeed the occupier of the Property in the 2019 Vacancy Reference Year. Their failure to do so and their failure to explain why, would make an adverse inference appropriate to weigh, if they had otherwise established a *prima facie* case.

Drawing an adverse inference is not, of course, mandatory. In context, it may be seen as appropriate, or it may not. Deciding that is part of the exercise of adjudication. But where, as here, the context shows that the request for such evidence was reasonably made, repeatedly requested, with extensions of deadlines for doing so over a period of months, the Panel finds that it would clearly be appropriate to draw an adverse inference if the Property Owners had otherwise proffered a *prima facie* case.

Conclusion and Summary

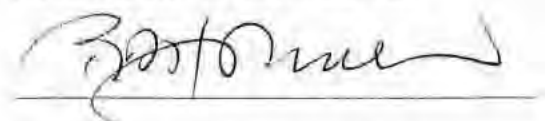
In this case, the Property Owners say that s.22(1) was the occupier of the Property for the 2019 Vacancy Reference Year, but they have failed to provide sufficient or satisfactory evidence to establish that. Further, their failure to provide a declaration initially, the scattered nature of their production of documents and information through the process, and their failure to provide a statutory declaration or affidavit deposing to the facts necessary to prove their assertions and to explain why documentary evidence was lacking, all reinforce the conclusion that they have not established that the Property was occupied to the extent required by the Bylaw for the 2019 Vacancy Reference Year.

As such, the Panel finds that the Vacancy Tax Review Officer's Determination that the Property should be treated as vacant and subject to the Vacancy Tax for the 2019 Vacancy Reference Year was reasonable and correct.

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under section 3.2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the above noted property for the 2019 Vacancy Reference Year.

Review Determination: DENIED



Panel: Robert D. Holmes, K.C.

The City of Vancouver Vacancy Tax Review Panel Decision

Date: December 20, 2023

File Number: RC-2022-00023

Requestor: s.22(1)

Vacancy Reference Year: 2020

Civic Address: s.22(1)

Folio: s.22(1)

At the request of the property manager representing a property owner (the "Property Owner"), the Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the Property Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Procedural History

The Property Owner, through its property manager, filed a declaration for the 2020 Vacancy Reference Year stating that the subject property (the "Property") was occupied by tenants and thus exempt from the Vacancy Tax for 2020.

By a letter dated April 19, 2021, the City advised the Property Owner that its declaration and claim for exemption were being audited. As part of that process, the City required that the Property Owner fill in a questionnaire concerning the Property.

The City reached a preliminary determination of its audit and sent a letter to the Property Owner dated June 18, 2021 advising that the City was unlikely to find the exemption claimed actually applied. The Property Owner was afforded the opportunity to provide more information.

The Property Owner appears to have simply reargued its original position.

On July 7, 2021, the City's Audit Department sent a letter to the Property Owner advising that the Vacancy Tax applied for the 2020 Vacancy Tax Year.

The Property Owner was advised that it could seek a review of that through this independent adjudicative process.

Background and Analysis

The law provides that a taxpayer seeking an exemption from tax is usually deemed to have the burden of proving factual matters required to establish the exemption. Of course, that applies to factual matters and not to interpretation of the law. There is no burden on any party with respect to interpreting the law. That is the role of the adjudicator.

The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20. At para. 26, the court noted that "The fundamental rules on the allocation of evidentiary burden in this matter remain valid.... The

taxpayer bears the burden of displacing the Minister's factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law." At para. 29, the court added that: "the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it — the duty to ascertain the correct interpretation lies with the court."

During the audit, the City required the Property Owner to answer questions about the declaration and whether the Property was actually tenanted for more than 6 months during the 2020 Vacancy Reference Year for tenancy terms of 30 days or more as was stated in the Property Owner's declaration.

The Property Owner, through its representative, answered "No."

In the next space, an explanation was provided on behalf of the Property Owner. The explanation was that "The property was tenanted from s.22(1) addition, it was under renovation from s.22(1) During the renovation, the property was uninhabitable. Please refer to evidence that we uploaded."

The position of the Property Owner was thus, that while it had not kept the Property occupied by tenants for more than 6 months, it had done so for 5 months and there was a period during which renovations took place that should afford it an exemption from the Vacancy Tax.

The evidence that the Property Owner uploaded included copies of the tenancy agreements, some post-dated cheques from tenants, the property management service agreement, and an invoice and letter from a tile installer concerning his work on the Property from August 14 – September 17, 2020 and a cheque in payment thereof, plus an invoice from a property insurer.

The evidence supported the statement made by the Property Owner concerning the time that the Property was occupied by tenants. That amounted to just 5 months during the 2020 Vacancy Reference Year.

The evidence also provided some support for there having been renovations (mostly tile work) in August-September 2020. There was, however, no evidence of any building permit or other permit obtained from the City for that or any other renovation work. It is not necessary to consider whether a permit was required in order to decide this review.

The nature of the renovation work done does not, by itself, demonstrate that the Property was "uninhabitable" for the period indicated by the Property Owner (i.e., August 14 – September 17, 2020).

In passing, note that the word "uninhabitable" occurs only once in the Vacancy Tax Bylaw. In section 3.10(a) it is used to describe situations where destruction or hazardous conditions occur rendering the property "uninhabitable" due to circumstances beyond the owner's control.

3.10 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period because:

(a) the residential property became uninhabitable because:

(i) it is substantially damaged or destroyed by a disaster, or

(ii) it is in a hazardous condition; and

(b) the disaster or hazardous condition was caused by circumstances beyond the reasonable control of a registered owner of the residential property,

except that this exemption shall not be allowed for more than two consecutive vacancy reference periods.

That is not the exemption provision that the Property Owner relies upon here. There is nothing to suggest that the Property became “uninhabitable” due to substantial damage or destruction by a disaster or it being in a hazardous condition.

Instead, the Property Owner relies upon section 3.2(a) of the Vacancy Tax Bylaw. The word “uninhabitable” does not appear in that exemption provision. Instead, it reads thus:

3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

(a) redevelop or safely carry out major renovations to the property:

i. for which permits have been issued by the City in the vacancy reference period, and

ii. which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay,

There are several key aspects to that provision in the bylaw.

First, “major renovations” are required, not minor ones. Tile work for just part of the premises does not amount to “major renovations.” Fixing some ceiling lights and toilet seats does not either. Putting wire mesh on vents and replacing a faucet do not either. The items of work do not, whether considered individually or collectively, amount to “major renovations.”

Second, “permits” have to have “been issued by the City in the vacancy reference period.” Here there were none put in evidence.

Third, while likely unnecessary given the first two, the Chief Building Official or their delegate has to confirm that the works “are being carried out diligently and without unnecessary delay.” There is no evidence of that here, likely because there was no permit obtained and likely no inspections done.

Also, as the other side of the coin, it is hard to conceive that (a) there was any delay given that here only about one month was taken up getting the minor renovation/updating work done, or that (b) the

one month taken up for the work performed would afford an exemption from having to have the Property occupied for at least 6 of the remaining 11 months.

Section 3.2 of the bylaw just noted requires that the renovations be major and that in order to do those works the property must be "unoccupied." The burden of proving that is on the Property Owner. There is no credible evidence here that that was really required.

In other submissions from the Property Owner, the reasons given for engaging in renovations are stated to include: (a) the building was about 100 years old, outdated, and deemed to be unlikely to readily attract a new tenant, (b) they had trouble finding a new tenant promptly after April 30, 2020 given the onset of the COVID emergency, and (c) once they decided to do renovations to make the Property more tenantable, it took time to find a contractor for that purpose. None of those reasons afford a basis for exemption from the Vacancy Tax.

The invoice from the contractor sets out that the bulk of the charges were for tile installation work on the "upper floor and stair." Other work amounted to less than 20% of the charges set out in the invoice. Those were described as installing wire mesh over all vents, replacing 2 toilet seats, replacing kitchen sink faucet, replacing 2 ceiling lights, and "remove and dispose old furnitures."

The invoice amount was for \$5,680.50. The cheque to the contractor was for \$7,024.50 and was dated October 13, 2020. No explanation for the cheque being more than the invoice amount has been given.

The cheque's re line lists what appears to be 7 different invoice numbers, including the one for the \$5,680.50 charge. It appears likely that this contractor does work for the property manager or Property Owner on several properties.

Even assuming that there were "extras" to the invoice for work done on the Property, the amount of those does not appear to justify categorizing the work done on the Property as "major." In any event, since this is an exemption that is being sought by the Property Owner, the burden of proving that the exemption applies is on the Property Owner and it has failed to do so.

A letter from the contractor was included, dated May 20, 2021. It refers to the address of the Property and the period during which renovation work was said to have been done. The contractor then recites, "During this renovation period, the premises was not ready, safe or suitable for anyone to reside in the premises."

There is no evidence that the contractor told the Property Owner or its representatives when contracting to do the work or at any point prior to May 20, 2021 that it required vacant possession of the whole of the Property in order to do the contracted for work. The fact that this letter came 8 months after the work was done and in the course of the Property Owner responding to the audit is a factor that must be weighed when considering what it says. It coincides more or less with the Property Owner's efforts to fit within the exemption from the Vacancy Tax. The letter come across as more advocacy for a position or outcome and a statement of opinion or argument than a statement of fact.

All evidence has to be tested by an adjudicator for its inherent reasonableness and probability in the context of the case overall. Indeed, in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.), the Court of Appeal said:

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

The contractor's qualifications have not been set out and so the foundation for treating his evidence as "expert" evidence whereby he might offer expert opinions as evidence does not exist. Section 10 of the *BC Evidence Act* has not been complied with.

The statements made by the contractor do not readily fit within the confines limited by the rules of evidence for "lay opinion" evidence. Those were discussed by Grauer, J., in *American Creek Resources Ltd. v. Teuton Resources Corp.*, 2013 BCSC 1042:

[14] Generally, opinion evidence is inadmissible unless it is expert evidence. There are exceptions. Lay opinion evidence may be admissible under circumstances discussed at length in Part II of Chapter 12 in *The Law of Evidence in Canada*, where the learned authors state at paragraph 12.14:

Courts now have greater freedom to receive lay witnesses' opinions if: (1) the witness has personal knowledge of observed facts; (2) the witness is in a better position than the trier of fact to draw the inference; (3) the witness has the necessary experiential capacity to draw the inference, that is, form the opinion; and (4) the opinion is a compendious mode of speaking and the witness could not as accurately, adequately and with a reasonable facility describe the facts she or he is testifying about. But as such evidence approaches the central issues that the courts must decide, one can still expect an insistence that the witnesses stick to the primary facts and refrain from giving their inferences. It is always a matter of degree. As the testimony shades towards a legal conclusion, resistance to admissibility develops.

The Panel recognizes that proceedings involving the audit process, the City of Vancouver's own review of audit determinations, and the procedure for this independent adjudicative review are less formal than a court of law and are not necessarily limited to evidence that would be admissible in a court of law. Nonetheless, there are provisions in the Vacancy Tax Bylaw for evidence, affidavits and the like to be provided. Thus, there has to be some consideration given to the extent that what is offered as factual evidence in this process is properly receivable as evidence. Also, it is appropriate to scrutinize with care all materials put forward by the Property Owner and the City to determine whether they are credible and should be treated as tending to prove the facts on which a decision is to be based.

The contractor's statement was that "During this renovation period, the premises was not ready, safe or suitable for anyone to reside in the premises." That statement does not really provide the factual basis on which the conclusion it sets out is based. One would have expected an explanation why tile work on the stairs and upper floor and fixing a few other things rendered the whole premises "not ready, safe or suitable" for anyone to reside there for the duration of more than a month or at all. But it is not given.

Also, the phrase “not ready, safe or suitable” does not bear up under scrutiny. The word “or” instead of “and” suggests that one or the other, but not necessarily all of the words used apply. And while “safe” would be concerning, if it were explained, “ready” and “suitable” suggest that subjective factors could be involved in what the contractor is saying, rather than objective ones about the premises having to be unoccupied “in order to do ... major renovations.”

The contractor’s statement, if it is offered as a “compendious” statement of opinion based on facts observed and related in this process, fails to qualify as such given the lack of foundation provided. Also, on the Property Owner’s argument, it goes to a central issue and as such does not really qualify as admissible lay opinion evidence. Even were it admissible, it would not carry weight given when it was signed, its conclusory nature, the lack of identification of facts supporting and assumptions made for it and the fact that it is simply implausible.

On the other hand, if the contractor’s statement is to be evaluated as a statement of fact and not opinion or argument, then, in the view of this Panel, it fails that test for similar reasons and carries no weight.

It is a matter of common sense that minor renovations (updates may be a preferable and more apt description) such as these do not require that the whole of the Property be vacated at all, much less for more than a month.

Finally, even were the Property required to be unoccupied for the month of these renovations, that does not meet the burden of proof on the Property Owner of justifying not meeting the 6 months occupation by a tenant requirement. Examined from the vantage point of April 30, 2020 (or earlier if notice was given by the previous tenants), the Property Owner had 8 months to get in a new tenant for at least 2 months so as to meet the 6 months threshold. Taking from April 30 to August 14 to start renovations and then taking from September 17 to October 30 to find a tenant, but leasing just from December 1, 2020 onwards does not meet the purposes and requirements of the Vacancy Tax Bylaw.

Notably, the rent from the previous tenant was s.22(1) per month while that for the new tenant was s.22(1) per month. The Property Owner provided no information about what it was asking for as rent after the first tenant left and whether it changed that over time. Not that that would have afforded it a basis for an exemption here, but the fact that a new tenant was located when the monthly rent amount was reduced suggests that the monthly rent asked for had some bearing on when the Property was relet. That much was in the control of the Property Owner.

Summary and Conclusions

Considering all of the evidence submitted, it appears here that when the first tenants moved out s.22(1) s.22(1) the Property Owner tried to relet the premises to another tenant, but was unable to do so, at least on terms that it wanted. The Property Owner decided to spruce up the premises and hired a contractor for that purpose. The Property Owner says that the contractor it hired could not get to the job till August 14, 2020. His work took a bit more than a month – until September 17, 2020. Thereafter, efforts to relet the premises resumed and by October 30, 2020 an agreement for a new tenancy commencing December 1, 2020 was entered into.

File Number: RC-2022-00023

The consequence of those facts is that the Property was not occupied by a tenant under a tenancy agreement of 30 days or more for the required 6 months during the Vacancy Reference Period. So, the exemption that applies if there is such a tenancy for 6 months or more during the year does not apply. Next, the reference to renovations does not afford an exemption for the reasons noted above.


In its September 22, 2021 letter to the City, the Property Owner's representatives noted that in the "past many years, the Property was successfully rented out to different tenants for many consecutive years." They added that the Property Owner "never wishes to leave any of its rental properties vacant." Also, they noted that the Property Owner paid its property taxes in a timely manner" and aimed to comply with all laws.

While the Property Owner may regard this as unfair, having to pay vacancy tax given that from its perspective it responded to events and getting a new tenant in place simply took longer than it had hoped, that does not afford it an exemption under the Vacancy Tax Bylaw. There is no flexibility in the imposition of the tax based upon reasonable or best efforts being made to get a tenant for at least the minimum period required by the bylaw for each Vacancy Reference Year.

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the law and the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the above noted property for the 2020 Vacancy Reference Year.

Review Determination: DENIED



Panel: Robert D. Holmes, K.C.

The City of Vancouver Vacancy Tax Review Panel Decision

Date: February 8, 2024

File Number: RC-2022-00028

Requestor: s.22(1) ("Current Owner")
s.22(1) ("Prior Owner")

Vacancy Reference Year: 2019

Civic Address: s.22(1)
("Property")

Folio: s.22(1)

INTRODUCTORY OVERVIEW:

1. At the request of the Current Owner, the Vacancy Tax Review Panel conducted an independent adjudicative review of this matter.
2. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the Prior Owner claiming primary residence status. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

PROCEDURAL HISTORY:

3. The Prior Owner failed to file a property status declaration in accordance with section 4.5 of the Vacancy Tax By-Law 11674 ("By-law") for the 2019 vacancy reference year. Upon review by the Vacancy Tax Department, the 'Undeclared' declaration status was found unacceptable resulting in the Property being deemed vacant and thus subject to the Vacancy Tax.
4. Pursuant to section 4.10 of the Bylaw, the Vacancy Tax Review Officer requested that the Prior Owner provide information or submit evidence in accordance with sections 4.7, 4.8 and 4.9 of the Bylaw or the Property would remain subject to the Vacancy Tax.
5. On July 5, 2021, the Prior Owner submitted a notice of complaint regarding the decision to impose the Vacancy Tax, on the grounds set out in subsection 6.2(b) of the By-law, namely that an error or omission on the part of the Prior Owner in completing the property status declaration resulted in the imposition of the Vacancy Tax.
6. In setting out the complaint, the Prior Owner described the error and omission as follows:

"I failed to declare on time, that my principal residence was not vacant in 2019. This was due to s.22(1). I am now able to tackle outstanding tasks and would like to retroactively declare that this property was occupied by me (and has been since it was ready for occupancy)."

7. By emailed letter dated August 6, 2021, the Vacancy Tax Review Officer informed the Prior Owner that they had completed an initial review of the file and did not consider that the information provided to date was sufficient and appropriate to establish that the Property was the principal residence of a homeowner for at least six months in 2019. In addition, the Vacancy Tax Review Officer asked to be provided with one additional supporting document covering six months of the 2019 reference period, noting that although the deadline for additional evidence submission had been July 29, 2021, no further evidence had been received to date. Finally, the Prior Owner was given notice that the Officer would proceed with the current determination if documents were not received on or by August 20, 2021.
8. By emailed letter dated September 3, 2021, the Vacancy Tax Review Officer informed the Prior Owner that based on the information and documents submitted to date the property status declaration was non-compliant.

FACTS:

9. In or about July, 2016, the Prior Owner s.22(1) [REDACTED]
[REDACTED]
[REDACTED]
10. The evidence submitted by the Prior Owner in respect of the 2019 vacancy reference year is summarized below:
 - a. Interim Drivers License – The interim license was issued June 14, 2021 and referenced the Prior Owner and the Property.
 - b. Residential Insurance Policy – The policy was effective July 14, 2018 to July 14, 2019, and July 14, 2019 to July 14, 2020 and was mailed to the Prior Owner at the Property.
 - c. ICBC Vehicle Storage Policy – s.22(1) [REDACTED]
[REDACTED] and referenced the Prior Owner and the Property. The policy did not cover six months of the reference period.
 - d. s.22(1) [REDACTED]
[REDACTED]
[REDACTED] They were addressed to the Prior Owner at the Property.
11. In addition to the emailed letters of August 6th and September 3, 2021, similar requests for additional clarification were sent to the Prior Owner on October 29, 2021, November 23, 2021, and December 15,

2021, specifically requesting that the Prior Owner obtain and submit an ICBC Residential Address History. As of March 28, 2022, such History had not been provided.

12. The Property transferred to the Current Owner on s.22(1) The Review Officer attempted to contact the Prior Owner on February 3, 2022 via phone; however there was no option to leave a voicemail.

AUDIT AND VACANCY TAX REVIEW OFFICER DECISIONS:

13. The Vacancy Tax Review Officer considered that the evidence provided was not sufficient to determine that this Property was the principal residence of an occupier for at least six months in the vacancy reference period, and is thus considered vacant under Section 2 of the Vacancy Tax By-Law
14. The compliance analyst requested a primary document and one additional supporting document to support the declaration. The Prior Owner did not respond to the request after numerous extensions. Given the overall evidence, a non-compliant determination was recommended.

ANALYSIS:

15. Residential property is considered to be unoccupied according to s.2.2 of the By-law if the residential property is not the Principal Residence of an occupier.
16. Principal Residence is defined in s.1.2 of the By-law, as “the usual place where an individual lives, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver’s licences, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence”.
17. The Review Panel is in agreement with the City that insufficient evidence has been provided to establish that the Property was occupied in 2019 for at least six months. In particular:
 - a. The interim driver license was issued June 14, 2021 and did not pertain to the 2019 reference period. The ICBC Residential Address History was never produced;
 - b. s.22(1) and
 - c. The remaining information provided, being the letters from the employer and the property insurer, were simply insufficient.

18. The Prior Owner was provided ample opportunities and time to make their case regarding principal residency. Although the deadline for additional evidence submission was extended six times from July 29th 2021 to January 10, 2022, no further evidence was produced for the Vacancy Tax Review Officer to consider.

FINAL DETERMINATION:

19. In conclusion, having reviewed and considered all evidence put before it, including the Prior Owner's documents and submissions, and having considered the relevant provisions of the By-law, the Panel is not persuaded on a balance of probabilities, that for the vacancy reference period of 2019, sufficient evidence was submitted by the Prior Owner to substantiate a principal residence status declaration.
20. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax should be imposed on the Property.

Review Determination: DENIED



Panel: Arlene H. Henry, KC

Date: February 8, 2024

City of Vancouver Vacancy Tax Review Panel Decision

Date: March 8, 2024

File Number: RC-2022-00029

Requestor (Registered Owner): s.22(1)
s.22(1) ["Owner"]

Vacancy Reference Year: 2019

Folio: s.22(1)

Civic Address: s.22(1)
s.22(1) ("Property")

Introduction

1. This is a decision of a Vacancy Tax Review Panel of a review requested by a registered owner of real property in the City of Vancouver, who has received a determination of a Vacancy Tax review officer that the Property is subject to the Vacancy Tax.

Authority to Assess Tax

2. The Vacancy Tax By-Law No. 11674 ("Bylaw") of the City of Vancouver imposes a Vacancy Tax on every parcel of taxable property in accordance with the Bylaw. Taxable property is defined to mean residential property that is vacant, not exempt from taxation under the Vancouver Charter ("Charter"), and not exempt from the Vacancy Tax under the Bylaw. The Property is not exempt from taxation under the Charter, and so the issue is whether it is exempt under the Bylaw.

3. S.2.2 of the Bylaw provides that residential property is considered to be unoccupied if it is not the principal residence of an occupier, and, is not occupied for residential purposes by an arm's length tenant or subtenant under an agreement, for a term of at least 30 consecutive days.

4. S.2.3 of the Bylaw provides that residential property is considered to be vacant property if it has been unoccupied for more than six months during the vacancy reference period, or is deemed to be vacant in accordance with the Bylaw.

5. Accordingly, a Vacancy Tax is imposed on every parcel of taxable property unless exempt or unoccupied for six months or less during the vacancy reference period.

Background Facts

6. A property status declaration was made on behalf of the Owner that declared the Property was occupied by an arm's length tenant under a tenancy agreement, or by an arm's length subtenant for at least 6 months in 2019 for terms of at least 30 consecutive days. A residential tenancy agreement was provided that showed non-arm's length parties s.22(1) s.22(1) as landlord and tenant, that covered a term from s.22(1) only and did not show the registered Owner as the landlord. s.22(1) company, and for the purposes of this review can be considered to be the Owner.

7. Several requests were made for the Owner to provide supporting evidence for a Permitted Occupant declaration or that would support a Principal Resident - Permitted occupant declaration, or evidence showing the Property was occupied by an arm's length tenant for at least six months in 2019 for terms of at least 30 days, together with a list of documents that might be used to support such a declaration. No further evidence was provided and an audit determined that the property status declaration is non-compliant and the Property is subject to the Vacancy Tax.

8. A Notice of Complaint was submitted on the basis of City error or omission which stated that the Property was occupied by s.22(1) as his principal residence during the vacancy reference period until the end of August, 2019, s.22(1) s.22(1) after which he did some renovations, and that the s.22(1) No further evidence was submitted despite several requests. The Vacancy Tax Review Officer concluded the review of the complaint and determined that the Property was not the principal residence of an occupier for at least 6 months in the Vacancy Reference Period of 2019, and is considered vacant under the Bylaw.

9. The Property had been licenced for short-term rentals in 2018 and 2019 and business licences were issued for both years. During the audit s.22(1) stated that the Property was rented s.22(1) of the Property while rentals occurred, and a rental agreement states that s.22(1) That agreement covered a period ending on January 31, 2019.

Analysis of Legal Issues Governing Review

10. In accordance with Vacancy Tax Review Adjudication processes, the Vacancy Tax Review Panel conducted a detailed, independent adjudicative review of all available evidence as submitted by both the City and the Property Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

11. Principal Residence is defined in s.1.2 of the Bylaw, as:

"the usual place where an individual lives, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licences, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence".

12. On the appeal to the Review Panel, counsel for the Owner submitted that s.22(1) s.22(1) lived in the Property continuously from approximately s.22(1) s.22(1) and conducted all of his daily affairs from and at the Property between those dates before beginning renovations on the Property. s.22(1) s.22(1)

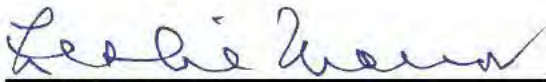
13. The Owner's counsel submitted an s.22(1) s.22(1) The Risk Assessment report stated that a total of 31 samples of suspect building materials were collected and analyzed, and no asbestos was detected in any of the samples. While not sampled, the study concluded that it was to be assumed that duct tape used in the heating system, sealant on roof vents and flashing, and insulating cement used at chimney penetrations for furnace/stove exhaust contained asbestos, and were mixed in with fire waste materials. The assessment concludes with the assumption that the entire building is considered contaminated with asbestos containing dust and debris and that all areas of the building affected by the fire should be demolished mechanically in accordance with qualified asbestos abatement work procedures. No opinion was provided but it is accepted that the house was uninhabitable after October 31, 2019, for the balance of the calendar year. An exemption is provided in the Bylaw for property that was unoccupied for more than six months during the vacancy reference period because it is substantially damaged or destroyed by a disaster or is in a hazardous condition, but in this case the Property was only in such a condition for two months and so this exemption does not apply.
14. The only document provided by the Owner's counsel is a search of the records of the Insurance Corporation of BC which indicates that the Property was the address of s.22(1) effective s.22(1) which is a period of less than 6 months.
15. The residential tenancy agreement provided does no more than indicate that a non-arm's length tenant was subject to a residential tenancy agreement for a period ending January 31, 2019, or one month of the 2019 calendar year, which does not satisfy the requirements set out in s.2.2 of the Bylaw, both because it was between non-arm's length parties and because it is for a period of less than six months. The records of ICBC may indicate that the Property was occupied by s.22(1) for approximately 3 months during 2019, but is not determinative of that occupancy, which in any event, together with the non-conforming residential tenancy in January, is still less than six months, and the Property is therefore considered to be vacant under s. 2.3 of the Bylaw. Other than the submission of counsel, no evidence has been provided which supports a finding that the Property was occupied for at least 6 months in 2019.
16. Counsel for the Owner submits that s.22(1) use of a different mailing address prior to July, 2019, cannot serve as a ground to deny the principal residence exemption. This submission misses the point of the provisions of the Bylaw which provides for the imposition of a Vacancy Tax if a residential property is unoccupied for the prescribed period of time during the Vacancy Reference Period, and the onus is then on the Owner claiming an exemption to provide evidence that the Property was occupied during that time. The submission of counsel without supporting evidence is insufficient to establish that the Property was occupied prior to July, 2019. The City and the Review Panel have denied nothing but have only evaluated the evidence submitted to support the Property Status Declaration.

17. No other evidence having been provided, the Review Panel is in agreement with the City that insufficient evidence has been provided to establish that the Property was occupied in 2019 for at least 6 months, and concludes that the Property is deemed to be vacant during that period.

Decision

18. In conclusion, having reviewed all evidence put before it, including the Owner's documents and submissions, as well as having considered the relevant provisions of the Bylaw, the Panel is not persuaded on a balance of probabilities that the Property was the principal residence of an occupier in 2019 within the meaning of s.2 of the Bylaw.

Review Determination: DENIED

A handwritten signature in blue ink, appearing to read "Leslie E. Maerov", is written over a horizontal line.

Panel: Leslie E. Maerov

Date: March 8, 2024

**The City of Vancouver Vacancy
Tax Review Panel Decision**

Date: March 6, 2024

File Number: RC-2022-00032

Requestor: s.22(1)

Vacancy Reference Year: 2021

Civic Address:

Folio: s.22(1)

s.22(1)

(the "Property")

At the request made in the name of the current property owner s.22(1) but in substance on behalf of a former owner s.22(1) the Vacancy Tax Review Panel (the "Panel") conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Procedural History

By a letter dated February 28, 2022, s.22(1) advised the City of Vancouver, Property Tax Office, that he had been the owner of the Property since s.22(1). Further, he advised that for a number of years after its acquisition the Property was occupied by s.22(1). It was rented out for s.22(1). At that point, he decided to renovate it. The renovations were not, in his view, so extensive or of such nature as to require any permits from the City of Vancouver. The renovation work continued to the end of November 2021. He contacted the City of Vancouver, Vacancy Tax Office to ask how to fill in the Vacancy Tax Declaration for the 2021 Vacancy Reference Period.

By an email dated January 26, 2022, addressed to s.22(1) (presumably someone working with s.22(1) on invoices provided), the owner was advised that since no permit was obtained for the renovations, it did not qualify under the Vacancy Tax Bylaw (the "Bylaw") as a major renovation and could not be considered exempt for that reason. He was invited to file a Vacancy Tax Declaration stating that the Property was "vacant" during the 2021 Vacancy Reference Year, but to file a complaint once he received the Empty Homes Tax Bill.

It appears that s.22(1) listed the property in or around November 2021 and a sale of it completed to a new owner s.22(1). Neither of those facts affect the determination of this review although they did appear to make the previous owner's ability to deal with the complaint and review process somewhat more cumbersome as his right to access the file relating to this property online with the City of Vancouver was shut off. Instead, he delivered materials directly to the City of Vancouver.

By a letter dated April 22, 2022 addressed to s.22(1), the owner was advised by the City of Vancouver, Vacancy Tax Department, that the "property remains subject to the Vacancy Tax" for the 2021 Vacancy Reference Year. The reasons stated were that:

The Vacancy Tax Review Officer considers that the evidence provided was not sufficient to determine that the property was undergoing redevelopment or major renovations where permits have been issued by the City and occupied by an arm's length tenant or subtenant for residential purposes for a combined period of at least six months in the vacancy period and is not eligible for the exemption in Section 3.9 of the Vacancy Tax By-Law.

s.22(1) asked for a review of that by his letter dated April 25, 2022. He did not elaborate on the grounds for the review. The City of Vancouver complied and a review was conducted. The upshot of that remained that the Property was subject to the Vacancy Tax for the 2021 Vacancy Reference Period.

The City of Vancouver Vacancy Tax Review Officer noted that:

The Homeowner has filed dispute of their vacant declaration on the basis that combined with the occupancy of the unit for 4.5 months, the unit was unoccupied due to major renovation. The homeowner has presented 15 invoices/quotes that support that they underwent, largely, a kitchen and two bathroom renovation, along with an overall refresh of the property (e.g. pressure washing, re-caulking, updating to LED lighting).

But the Officer also noted that there was no permit. These renovations were characterized as "minor" given their nature and the lack of a building permit.

s.22(1)

Review of the Evidence and the Exemption Sought

In the materials provided by or on behalf of the owner in support of the Notice of Complaint concerning the tax assessed here, numerous photographs of the Property "After" the renovations were done were provided, along with copies of invoices most or all of which were addressed to Intergulf Development Group totaling more than \$83,000 for renovation costs, including new appliances, flooring and the like. It is clear from those that the renovations were high quality and thorough.

That, of course, does not mean that the renovations afford an exemption from the Vacancy Tax. The Vacancy Tax Bylaw clearly states as to when the major renovations exemption applies:

3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property:

- (a) was unoccupied for more than 180 days during the vacancy reference period in order to redevelop the property or safely carry out major renovations; and
- (b) was undergoing redevelopment or major renovations,
 - i. for which permits have been issued by the City, and
 - ii. which, in the opinion of the City Building Official, are being carried out diligently and without unnecessary delay,

The underlined passage is what renders the claim of the owner for an exemption under the major renovations provision of the Vacancy Tax Bylaw inapplicable. It is not just the fact of “undergoing redevelopment or major renovations” that must be established. It is also a requirement that “permits have been issued” and the City Building Official determining that they are being “carried out diligently and without unnecessary delay.”

The law provides that a taxpayer seeking an exemption from tax is usually deemed to have the burden of proving factual matters required to establish the exemption. Of course, that applies to factual matters and not to interpretation of the law. There is no burden on any party with respect to interpreting the law. That is the role of the adjudicator.

The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.*, 2006 SCC 20. At para. 26, the court noted that “The fundamental rules on the allocation of evidentiary burden in this matter remain valid.... The taxpayer bears the burden of displacing the Minister’s factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law. At para. 29, the court added that: “the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it — the duty to ascertain the correct interpretation lies with the court.”

The owner questions why it is necessary to have a permit to qualify for the exemption. The short answer is that that is what the bylaw states and it represents what the Council of the City of Vancouver chose for the imposition of the tax and for exemptions from it.

The City of Vancouver’s Vacancy Tax Bylaw was enacted under the authority granted to the City by the Provincial Government in Part XXX of the Vancouver Charter. Section 616 provides for authority to enact a vacancy tax. Section 617 provides, in part, that:

617. A vacancy tax by-law must do the following:

- (a) provide for a process for the administration and collection of a vacancy tax;
- (b) establish circumstances in which residential property is to be considered unoccupied;
- (c) specify a vacancy reference period and the total length of time that apply for the purpose of determining whether a residential property is vacant property;
- (d) establish the basis on which the vacancy tax is imposed, which may be any basis in relation to taxable property;

...

- (f) establish exemptions from the vacancy tax;

In order to come within an exemption, the owner must show that all facets of it are met. The owner has acknowledged that he cannot do so given his statement that he did not apply for or obtain any permit. That is sufficient to dispose of this review.

By way of context, the policy of the City in framing this exemption as it has, relates not just to having some standard for determining a distinction between major and minor renovations, but also that they fall

within the category of renovations for which permits are required and be expeditiously carried out. That is why the bylaw exemption incorporates all three of those factors as requirements. Without that, a property owner could argue that the cost, quality or detail of the renovation work sufficed to make it a major renovation and that permits and a modicum of oversight from the building inspection process was not required. That was not the legislative choice that Council of the City of Vancouver made.

The City of Vancouver has identified in plain language on a web page when a building permit is required and when it is not: <https://vancouver.ca/home-property-development/when-you-need-a-permit.aspx#:~:text=Generally%2C%20you'll%20be%20required,suite%20to%20an%20existing%20house.> What it sets out there is based upon what is provided for in the City of Vancouver's Building Bylaw and other enactments whereby permits are required relating to construction and renovation projects.

Under the heading discussing when a building permit is not required, the web page lists the following:

Many small projects and repairs do not require a permit. These include:

- Replacing fixtures, cabinets, or flooring
- Carry out non-structural maintenance and minor repairs to the exterior of your home
- Painting
- Unclogging drains
- Replacing an existing electric powered hot water tank
- Replacing defective fuses, receptacles, or switches
- Installing roofing, gutters, or drain-pipes

The owner of the Property in this case incurred substantial cost doing high quality renovations that involved replacing fixtures, cabinets, and flooring, painting and replacing appliances. Nonetheless, the fact that a permit was not, on the owner's own admission, necessary for the nature of the work undertaken, confirms that this was not a "major renovation" within the meaning of section 3.2 of the Vacancy Tax Bylaw. "Major" in the bylaw provision does not mean major cost or major quality upgrades.

Further, the absence of permits, inspections and oversight from the City's Building Official to determine if the work was being diligently carried out and without delay does not serve the policy of the Vacancy Tax Bylaw, to encourage ongoing occupation of residential property and prompt return to occupation of properties subject to renovation or redevelopment.

Examples from the City of Vancouver's website of when a building permit is required are listed thus:

- Any new construction (new buildings and/or renovations to existing buildings that create a new area)
- Changing the land use of an existing commercial space
- Adding a secondary suite to an existing house

- Renovation projects that include moving interior walls and/or existing plumbing, electrical, or gas lines
- Structural repairs
- Drywall repairs to fire separations in multi-unit residential buildings
- Building or altering a garage, shed, or deck
- Renovating or tenant improvements for a new or existing commercial space

The work done in this instance to this Property does not appear to come within those categories. At least, the owner did not regard them as requiring a building permit and did not apply for or get one.

It is worth noting that the choice whether to go with a no-permit renovation or one that required permits was one that the owner made. §.22(1)

§.22(1), for example, a permit may well have been required, inspections done and a certification from the City Building Official as to diligence and no delays may have been obtained. That is not what happened, however.

The reasoning of the Review Officer could have extended further and explained that the purpose of the Vacancy Tax is to encourage occupation of residential property. What happened here does not conform to that purpose.

Here, the owner knew that in 2021 the Property had been occupied by tenants for just 4.5 months. The law required at least 6 months in order to qualify as occupied and avoid the tax. Further:

- It appears that the renovation work was not started until September and ended in November 2021, at least from the face of the invoices.
- That leaves unexplained what happened in May, June, July and August.
- If the property had either remained tenanted for periods of “at least 30 consecutive days” or had been occupied by the owner or other qualifying person as their principal residence so as to extend the total period of occupation past the 6-month mark, then arguably the tax would not apply. But that did not happen.
- Instead, what happened was the Property remained unoccupied for about 7.5 months and the renovation work did not qualify for all three components of section 3.2 of the Vacancy Tax Bylaw as:
 - a. a “major renovation”,
 - b. with a “permit”, and
 - c. being “carried out diligently and without unnecessary delay” in the opinion of the City Building Official.

Conclusion

Given the fact that there was no permit and thus section 3.2 of the Vacancy Tax Bylaw did not afford an exemption for the owner of this Property for the 2021 Vacancy Reference Period, the City of Vancouver Vacancy Tax Review Officer did not request or obtain documents so as to confirm that the tenants said to have occupied the Property from January 1, 2021 to May 14, 2021 were actually there. Having tenants

File Number: RC-2022-00032

for less than 6 months would not qualify for establishing that the Property was occupied for the required period so as to avoid the tax. Assuming there was a tenant in place for only about 4 ½ months, the owner would have to have established either another tenancy or owner occupation so as to exceed the 6 months requirements. The alternative of showing that the rest of the year the Property was under “major renovations” failed as there was no permit.

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel’s final determination that the evidence in its totality does not establish that there is a proper basis under the language of the Vacancy Tax Bylaw leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under section 3.2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax should be imposed on the above noted property.

Review Determination: DENIED



Panel: Robert D. Holmes, K.C.

Date: March 6, 2024

The City of Vancouver Vacancy Tax Review Panel Decision

Date: March 11, 2024

File Number: RC-2022-00035

Requestors: s.22(1) [REDACTED]
(the "Owners")

Vacancy Reference Year: 2018

Folio: s.22(1) [REDACTED]

Civic Address: s.22(1) [REDACTED]
s.22(1) [REDACTED]
(the "Property")

Introduction

At the request of the Owners of the Property, the Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the Owners claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Overview

This case involves a property that was unoccupied during the Vacancy Reference Year. The Owners say that was because it was undergoing major renovations.

The bylaw provision in effect during 2018 and relied upon by the Owners for exemption from tax (section 3.2(a)(ii)) required at least these three things:

- (a) The Property was unoccupied for more than six months in order to safely carry out major renovations to the Property;
- (b) Permits for the major renovations have been issued; and
- (c) In the opinion of the Chief Building Official, the major renovations for which permits had been issued were being carried out diligently and without unnecessary delay.

The building permits on which the Owners rely here were issued in 2004 and 2006. The only permit issued in 2018 was an electrical permit obtained in June 2018. That is not what the Owners relied upon to establish major renovations that required the Property to be unoccupied for more than six months in that year.

In passing, the Panel notes that it is six months and not "180 days" that is the duration in the Vacancy Tax Bylaw that applies here as, by Bylaw 12287 enacted October 30, 2018, the City amended "180 days" in the previous version of the bylaw provision to be "six months" and made the change effective on enactment.

Both the City of Vancouver Vacancy Tax Office and the Owners agree that there were major renovations involving the Property, that those continued into 2018, and that permits had been issued.

Where the parties differ is over the last requirement – the opinion of the Chief Building Official concerning diligence and absence of unnecessary delay.

The Vacancy Tax Office Audit and the Review Officer's Determination

The Vacancy Tax Office audit and the review done by its Review Officer accepted the opinion of the Supervisor, Building Inspection Services, and the District Building Inspector in the City's Building Department as being equivalent to the bylaw's provision concerning the Chief Building Official and said that governed.

That opinion was that the work on the Property was not being conducted diligently and without unnecessary delay. So, it was against the Owners and made the exemption inapplicable.

The Owners' Position on This Review

The Owners sought a review by this Panel. Through their lawyer's letter dated February 2, 2022, they set out the grounds on which they rely. They ask that this Panel "vacate" the decision of the Vacancy Tax Review Officer and set out two bases for that:

- (a) The first is that for purposes of the diligence and absence of delay issue, the focus must be on 2018, not on the period from when the building permits were issued in 2004 and 2006. They then argue that the renovation work done in 2018 was done diligently and without unnecessary delay.
- (b) The second is that the opinion relied upon by the Vacancy Tax Review Officer was that of a subordinate and not the Chief Building Official. Counsel for the Owners refer to case law concerning improper delegation.

The first issue focuses on whether there was diligence and an absence of unnecessary delay in 2018. It is partly a factual issue and partly one of whether on the applicable facts the opinion was reasonable.

Note, however, that the exemption requires establishing positively that there was diligence and no unnecessary delay. It is not sufficient to argue that the City and its Vacancy Tax Office failed to prove a lack of diligence or delay.

The second involves argument about who is to provide the opinion, the Chief Building Official or a delegate. The Owners assert that the Vacancy Tax Bylaw provision required the opinion of the Chief Building Official and no one else would do. As such, the Owners contend that absent an opinion from

the Chief Building Official, the audit determination and that of the Review Officer are based upon the opinion of the wrong person.

The version of the Vacancy Tax Bylaw enacted originally in 2016 referred to the “City Building Official” whose opinion as to diligence and absence of unnecessary delay was required. That role was changed in later versions of the bylaw:

- (a) Bylaw 11855 enacted July 11, 2017 replaced section 3.2 and used the phrase “Chief Building Official” instead of “City Building Official” in section 3.2(a)(ii); and
- (b) Bylaw 13258 enacted February 8, 2022 amended section 3.2(a) so that the phrase “or the Chief Building Officer’s delegates” was inserted after “Chief Building Official.”

Counsel for the Owners argue that the amendment of section 3.2(a) in Bylaw 13258 should be taken as determinative as to the meaning to be given how section 3.2(a)(ii) previously stood. They argue that since the later amendment expressly providing that the opinion could be from a delegate of the Chief Building Officer, that means that for the 2018 Vacancy Reference Year only the Chief Building Official could do so.

That approach is not right. Bylaws, like all statutes, must be read and interpreted as they stood at the material time. Later amendments do not apply to determine how the bylaw as it previously stood should be interpreted.

Discussions and debates about the measure when originally enacted may be considered. If there are discussions and analyses available that explain how legislative draftspersons or legislators interpreted the previous version and what they aimed to remedy by amending it, those may possibly be considered as well. But consideration of those is usually limited to their persuasiveness to resolve ambiguity. No one has put forward evidence before this Panel of any such statements concerning section 3.2(a)(ii).

On the face of Bylaw 13258, the amendment adding the delegation provision to section 3.2(a)(ii) was one of several miscellaneous amendments to several provisions of the Vacancy Tax Bylaw. Legislators pass bylaws for all manner of reasons. Those may include remedying something or may involve clarifying something or making express what is already included in the bylaw’s meaning. Later herein, the Panel will set out provisions from the *Interpretation Act* and Vancouver Charter that assist in understanding section 3.2(a)(ii) as it stood in 2018. They run counter to the arguments of the Owners’ counsel and indicate that where an enactment refers to a public officer in a public office, that means to “include a person acting for the public officer.”

For those reasons, the Panel does not accept the argument of counsel for the Owners that the subsequent amendments to section 3.2(a)(ii) providing that delegates of the Chief Building Official may provide the opinion under that section are determinative whether they could do so prior to the amendments.

The Panel's Jurisdiction

Counsel for the Owners does not identify the legal basis for the Panel making an order that the decision of the Review Officer be vacated.

Section 6.15 of the Vacancy Tax Bylaw provides that the Panel is to “make a determination on the review, advise the registered owner in writing of its determination and, if the review request is successful, rescind the vacancy tax notice.”

Determinations may involve granting or denying the review requested by an owner. The result of granting the review request typically would be to accede to the property owner's position that the Vacancy Tax was not applicable and payable. The result of denying the review request would be to hold that the tax was applicable and payable.

The language of the bylaw does not confine the Panel just to those outcomes, however. It is expansive in holding that the Panel must “make a determination on the review.”

Section 6.15 of the Vacancy Tax Bylaw is explicit that if the “review request is successful” then the Panel should order that the vacancy tax notice is rescinded. Success, in this context, must mean successfully establishing that the tax is inapplicable to the property in question for the reference year.

But if the appropriate decision is that there should be further evidence obtained or that a proceeding be done again due to unfairness in procedure or otherwise, that appears also to be open to the Panel to order. Thus, for example, the Panel could make a determination that sets aside the Review Officer's decision, directs that further evidence be obtained and reviewed and further proceedings take place as may be appropriate.

In saying that, the Panel acknowledges that section 6.15 of the Vacancy Tax Bylaw does state that the review by the Panel is to be “based on the materials provided.” Also, the review process is not a trial. There is no hearing. The determination is to be final. Those factors support dealing with the matter, if possible, and not remitting it for further evidence or proceedings.

That leads back to whether, if the Owners' counsel is correct in the arguments made on these points, it is open to the Panel to decide the diligence and delay issues. The thrust of the Owners' counsel's argument appears to be that if there is no valid opinion of the Chief Building Official, then the questions of diligence and delay should be determined by the Panel, based on the evidence that it has before it. They Owners' counsel advocates for a finding that there was diligence and no unnecessary delay in 2018 in safely doing the major renovations work.

The Owners' counsel thus seems to be inviting this Panel to substitute its own opinion as to the diligence and delay issues for that of the Chief Building Official. Doing that is, as section 6.11 of the Vacancy Tax Bylaw sets out, a part of the Panel's review of the Review Officer's determination.

The Panel has no doubt that, in an appropriate case, it could substitute its judgment on the facts and law for whatever the audit or Review Officer had concluded about the Chief Building Officer's opinion and the issues of diligence and delay. Similarly, returning the matter to the Review Officer for further evidence eliciting what the opinion of the Chief Building Office actually was and for reconsideration could possibly be argued, in appropriate circumstances, to be appropriate. Whether styled as a direction, request or interim order from the Panel prior to a final determination, the evidence would thus be obtained.

In the Panel's view, seeking such further evidence is not required or advisable here. The Owners' counsel does not ask for it, but instead presents argument on the evidence that is currently before the Panel and says that the issues of diligence and lack of unnecessary delay should be resolved in favor of the Owners.

The Supreme Court of Canada sets out at paras. 141 and 142 of its decision in *Vavilov* what courts may do in judicial review cases. Judicial review is a distinct process, of course. The review by the Panel is based on the bylaw. But to some extent understanding the powers of the court on judicial review may assist in deciding whether the Panel may make a finding of fact on the delay and diligence issues here. The Supreme Court held as follows:

[141] Giving effect to these principles in the remedial context means that where a decision reviewed by applying the reasonableness standard cannot be upheld, it will most often be appropriate to remit the matter to the decision maker to have it reconsider the decision, this time with the benefit of the court's reasons. In reconsidering its decision, the decision maker may arrive at the same, or a different, outcome: see *Delta Air Lines*, at paras. 30-31.

[142] **However, while courts should, as a general rule, respect the legislature's intention to entrust the matter to the administrative decision maker, there are limited scenarios in which remitting the matter would stymie the timely and effective resolution of matters in a manner that no legislature could have intended: *D'Errico v. Canada (Attorney General)*, 2014 FCA 95, 459 N.R. 167, at paras. 18-19. An intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations. Declining to remit a matter to the decision maker may be appropriate where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose: see *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, 1994 CanLII 114 (SCC), [1994] 1 S.C.R. 202, at pp. 228-30; *Renaud***

v. Quebec (Commission des affaires sociales), 1999 CanLII 642 (SCC), [1999] 3 S.C.R. 855; *Groia v. Law Society of Upper Canada*, 2018 SCC 27, [2018] 1 S.C.R. 772, at para. 161; *Sharif v. Canada (Attorney General)*, 2018 FCA 205, 50 C.R. (7th) 1, at paras. 53-54; *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*, 2017 FCA 45, 411 D.L.R. (4th) 175, at paras. 51-56 and 84; *Gehl v. Canada (Attorney General)*, 2017 ONCA 319, 138 O.R. (3d) 52, at paras. 54 and 88. Elements like concern for delay, fairness to the parties, urgency of providing a resolution to the dispute, the nature of the particular regulatory regime, whether the administrative decision maker had a genuine opportunity to weigh in on the issue in question, costs to the parties, and the efficient use of public resources may also influence the exercise of a court's discretion to remit a matter, just as they may influence the exercise of its discretion to quash a decision that is flawed: see *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6, at paras. 45-51; *Alberta Teachers*, at para. 55.

So even on judicial review by a court, there is power to decide the outcome of a case without remitting it for further evidence, proceedings and reconsideration. With that in mind, the Panel will review the procedural history, background facts, bylaw and statutory provisions and what the appropriate result should be in this case.

Procedural History

The Owners filed a declaration concerning the Property for the 2018 Vacancy Reference Period claiming an exemption from the Vacancy Tax pursuant to section 3.2(a), asserting that major renovations were being conducted throughout the year.

By a letter dated August 15, 2019, the Vacancy Tax Office wrote to the Owners advising that their declaration that the Property was exempt from the Vacancy Tax was selected for audit and the Owners were requested to fill in and return a questionnaire and provide supporting documents for their claim for exemption.

By a letter dated November 20, 2020, a City of Vancouver Compliance Analyst in the Vacancy Tax Office wrote to the Owners an "Audit Pre-Determination Letter" which set out the requirements of the section 3.2(a) exemption from tax in the Vacancy Tax Bylaw. Those include that the residential property was unoccupied for more than six months during the vacancy reference period in order to redevelop or safely carry out major renovations to the property. Also included are requirements that permits have been issued and that the works are, in the opinion of the City Building Official, being diligently carried out and without unnecessary delay.

The letter went on to note that:

We have received information from the City of Vancouver Development, Buildings and Licensing department noting the renovations or redevelopments on permits (BU427933 and

BU436889) were not carried out diligently in 2018. Permits were issued on April 26, 2004 for permit BU427933 and October 18, 2006 for permit BU436889.

...

Based on the evidence provided to date, we do not consider that this property was unoccupied for more than six months because the property was undergoing redevelopment or major renovations which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay in 2018.

Please let us know if you have additional information that you can provide to show that your property is exempt under the Vacancy Tax Bylaw.

By a letter dated February 17, 2021, the Vacancy Tax Office wrote to the Owners advising that the results of the audit conducted had determined that no exemption from the tax applied:

"The reason(s) for our non-compliant conclusion are as follows:

·Inappropriate Evidence

Based on the evidence provided, the City determines that this property does not qualify for the 'Property undergoing redevelopment or major renovations' exemption on the basis that the renovations, in the opinion of the Chief Building Official, were not being carried out diligently and without unnecessary delay.

The Owners filed a Notice of Complaint May 17, 2021 and sought a review of the audit determination by a Vacancy Tax Review Officer.

By a letter dated November 7, 2021, the Owners were advised by the Vacancy Tax Office that the focus in this case was on the matter of diligently and without delay carrying out the major renovations work in 2018.

The Vacancy Tax Review Officer sought the opinion of the Chief Building Official in order to determine whether the redevelopment or renovations were *being carried out diligently and without unnecessary delay*.

The opinion of the Chief Building Official is that the redevelopment or renovations were not being carried out diligently and without unnecessary delay.

The reasons for the Chief Building Official's opinion have been attached for your review. If you have any additional evidence to provide for the Vacancy Tax Review Officer to support that the property should not be subject to the vacancy tax for the 2018 vacancy reference year, please submit the additional information by the submission deadline as follows:

The materials attached to the November 7, 2021 letter to the Owners do not have a document signed by the Chief Building Official. Instead, they include a letter dated November 7, 2021 from Eli Zienty, District Building Inspector. This is the opinion of the Chief Building Official referred to in the Vacancy Tax Office November 7, 2021 letter. It sets out the opinion that the major renovation work done in 2018 was not done diligently and without unnecessary delay and the reasons for that.

Reasons for my decision:

- **BU427933** for exterior and interior alterations to add to the main and second floors, to provide a new front and rear porch, reconfigure a portion of the basement, main and second floor layouts, to raise the existing roof to provide proper insulation and to provide upgrading on insulation and walls to all floor levels for this existing one family dwelling with caretaker suite on this site was **issued on April 7, 2004**.
- **BU436889** for interior and exterior alterations to the existing 3-storey one-family dwelling on this site by adding an indoor pool room with terrace above at the rear and extending front porch and rear deck was **issued on October 18, 2006**
- During the 2018 vacancy reference year, there were no building inspections passed in 2018 for either permit.
- The building permits have been issued for > 12 years and the last building inspection was passed in 2010 (Sheathing).

By a letter dated February 2, 2022, the Owners were advised that the Vacancy Tax Review Officer had reviewed the matter and denied their claim for an exemption. The letter set out the "reasons for the determination" as follows:

Based on the evidence provided and the opinion of the Chief Building Official, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in the vacancy reference period was not because it was undergoing redevelopment or major renovation with permits issued by the City, which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

Building permits BU427933 and BU436889 were issued on April 7, 2004 and October 18, 2006, respectively. During the 2018 vacancy reference year, there were no building inspections passed for either permit, and the last building inspection (sheathing) was passed in 2010.

So, for the 2018 Vacancy Reference Period, the bylaw provision required that the opinion of the Chief Building Officer concerning diligence and absence of unnecessary delay was what was required. On the evidence before the Panel, it appears that on September 12, 2019, the Vacancy Tax Office inquired of Shawn Dyste, Supervisor, Building Inspection Services, whether the permits issued concerning the Property involved redevelopment or major renovations and whether the work was being

pursued diligently. The response was that the permits involved major renovation work, but were not being pursued diligently.

On November 18, 2020, a Compliance Analyst in the Vacancy Tax Office emailed Shawn Dyste again inquiring as to the permits and status of work on the Property.

Mr. Dyste contacted Eli Zienty, District Building Inspector, and was informed in an email dated November 19, 2020, as follows:

I agree with your decision to charge the tax for 2018. I believe the tax was brought into existence for projects like this one. BU436889 for the interior alteration has been issued for 14 years and still hasn't had a framing inspection. I wasn't sure from the missing inspection records on Prism SQL and only progress inspections since it's been converted to Posse, but Jamie confirmed the interior is still gutted and nothing is happening on the inside. BU427933 for the exterior alteration is slowly progressing as the tile they are using for their cladding comes in small deliveries from Italy and slowly gets installed. But as you decided after your review, this address is clearly not exempt.

Bylaw section 3.2(a)(ii) requires a favorable opinion as to diligence and absence of unnecessary delay for the exemption to apply. There is no evidence here that the Chief Building Official or anyone else in the Building Department had that opinion. So, on the face of it, the exemption is not available to the Owners.

Does it Matter that the Chief Building Official Did Not Personally Provide An Opinion?

Section 617(f) of the Vancouver Charter provides that Council, in enacting the Vacancy Tax Bylaw, could decide upon and "(f) establish exemptions from the vacancy tax." It is that jurisdiction that permitted section 3.2(a) to be enacted.

Section 23 of the *Interpretation Act* provides as follows:

(3) Words in an enactment directing or empowering a public officer to do something, or otherwise applying to the public officer by the public officer's name of office, **include a person acting for the public officer** or appointed to act in the office and the deputy of the public officer.

Section 1 of the Interpretation Act defines "public officer" in an expansive manner:

"public officer" includes a person in the public service of British Columbia;

The word "includes" is telling. It recognizes that it is not just persons in the public service of British Columbia who come within the meaning of "public officer."

Section 2(1) of the *Interpretation Act* provides:

2 (1) Every provision of this Act applies to every enactment, whether enacted before or after the commencement of this Act, unless a contrary intention appears in this Act or in the enactment.

Section 1 defines “enactment” and “regulation”:

“enactment” means an Act or a regulation or a portion of an Act or regulation

“regulation” means a regulation, order, rule, form, tariff of costs or fees, proclamation, letters patent, commission, warrant, **bylaw** or other instrument **enacted**

(a) **in execution of a power conferred under an Act**, or

(b) by or under the authority of the Lieutenant Governor in Council, ...

The combined effect of these is that bylaws of the City of Vancouver passed pursuant to the Vancouver Charter are subject to the *Interpretation Act*. There is no contrary intention in the Vancouver Charter or the Vacancy Tax Bylaw expressly excluding the application of the *Interpretation Act*.

Given the definition of “public officer” is expansive, and given that the *Interpretation Act* applies to Vancouver bylaws, it is reasonable to conclude that the phrase “public officer” in the *Interpretation Act* applies to the “Chief Building Official” referred to in section 3.2(a)(ii) of the Vacancy Tax Bylaw.

Further, it is reasonable to conclude that section 23 of the *Interpretation Act* applies so that the words in section 3.2(a)(ii) should be construed to “include a person acting for the public officer.”

Shawn Dyste, Supervisor, Building Inspection Services, and Eli Zienty, District Building Inspector, each fit as such a person acting for the Chief Building Official. Their opinion concerning the lack of diligence and the unnecessary delays in pursuing the major renovations in 2018 apply here. The Vacancy Tax Office and Review Officer clearly took that to be so and reported it as such to the Owners. They set it out as the opinion of the Chief Building Official. Assuming that is correct, then given that the opinion was against the Owners, their efforts to fit within the exemption fail.

Whose Obligation Is It to Obtain the Chief Building Official’s Opinion?

If the Panel is wrong in that analysis, then the question of who should seek and obtain the opinion of the Chief Building Official should be considered. In brief, the Owners appear to take the position that the Vacancy Tax Office had the obligation to do so. Nothing in the bylaw suggests that is so.

To the contrary, the bylaw sets out that it is the Owners’ obligation to set out the basis for the tax not applying and provide evidence to support that. That is clear throughout the process, from the initial

declaration onwards. With the Notice of Complaint and review by Review Officer stage, section 6.3 says that the Notice of Complaint the Owners provide must, among other things:

- (e) state the grounds on which the complaint is based under Section 6.2;
- (f) state why the parcel should not be subject to the vacancy tax based on the grounds of complaint; and
- (g) provide supplementary information and evidence to substantiate the reasons for the complaint.

Having a evidence of a favorable opinion from the Chief Building Official is critical to the Owners' case. They were told repeatedly of the opinion of the City's Building Inspection Services was against them and they were invited to provide additional evidence. There is no evidence that they tried. Why did they fail to seek a statement of opinion from the Chief Building Official? There is nothing to show that they even asked the Chief Building Official for an opinion or tried to demonstrate why a favorable opinion should be granted.

The most probable explanation is that they knew that the Chief Building Official would look to his department's inspectors and managers and obtain information from them in addition to anything that the Owners provided as information. That would lead inevitably to a determination adverse to the Owners.

The law provides that a taxpayer seeking an exemption from tax is usually deemed to have the burden of proving factual matters required to establish the exemption. Of course, that applies to factual matters and not to interpretation of the law. There is no burden on any party with respect to interpreting the law. That is the role of the adjudicator.

The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.*, 2006 SCC 20. At para. 26, the court noted that "The fundamental rules on the allocation of evidentiary burden in this matter remain valid.... The taxpayer bears the burden of displacing the Minister's factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law. At para. 29, the court added that: "the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it — the duty to ascertain the correct interpretation lies with the court."

Were the Major Renovations in 2018 Done Diligently and Without Unnecessary Delay?

As discussed, the key issue here is whether the major renovations in 2018 were done diligently and without unnecessary delay. The Panel's finding is the Owners failed that part of the exemption requirements.

In this case, the Owners cannot say that they were not informed of what the Building Department had to say about lack of diligence and about delay. The November 20, 2020 letter is explicit. The Building

Department advised the Vacancy Tax Office that the permits were issued in 2004 and 2006, the premises were gutted, but after that work lagged. Inspections by the City's building inspectors were not called for by the Owners.

The Owners were invited several times to put forward "additional information ... to show that your property is exempt under the Vacancy Tax Bylaw." It was up to them to establish that they had a property that was undergoing major renovations, had a permit and that they had satisfied the Chief Building Official of their diligence and lack of unnecessary delay.

Presumably that could have included either information that contradicted what was set out in the November 19, 2020 email noted above or that supplemented it to explain how the redevelopment or renovation work done in the 2018 Vacancy Reference Period was done diligently and without unnecessary delay.

The documents and information they provided were reviewed by the Review Officer. Contrary to the argument by Owners' counsel, those do not establish diligence and an absence of unnecessary delay in 2018.

It is important to keep in mind that the major renovations on this Property were for a very substantial project. The Property itself is said to be about **s.22(1)**. Its assessed value was about **s.22(1)**. The photographs of the residence included in the evidence show it is a very large one. The work involved gutting the interior and comprehensive renovations of the interior, including installing new drywall, stone and other wall materials, elaborate rewiring and so on, plus substantial stonework on the outside of the house, excavation of what appears possibly to be a pool area and a trench with large pipe, possibly for drainage.

For such a substantial project, one would expect many inspections from various types of building inspectors. The evidence of inspections consists of a copy of one page with brief handwriting notes for each of January 28, 2016, August 24, 2017, and September 25, 2018. The note for September 25, 2018 says "Update on Progress – Stone Attachment ongoing (extremely detail)."

There were no framing inspections from the time the building permits were obtained through to 2020. That means none in 2018. Common sense tells one that a framing inspection should precede covering up the walls. Homeowners or their contractors are supposed to call for inspections when ready, review the inspection reports, perform corrective work if deficiencies are noted and move on to the next stage of construction. The absence of interim and final inspections in 2018, aside from one cryptic note about an update on progress that refers only to stone work, does not meet what would reasonably be expected for the different aspects of work in a major renovation project like this. That is telling against the Owners.

A homeowner or their contractor ought properly to keep records of the work being done, the inspections that take place, whether they passed with or without conditions or failed, and how all the work ties in

with a budget, including work done and work remaining to do. Nothing like that was produced. There was no evidence of a construction contract with a general contractor, or a construction management contract, if either of those existed with this project. There were no copies of contracts or subcontracts with various trades (framing, drywall, electrical, mechanical, plumbing and so on).

Para. 7 of the letter from Owners' counsel sets out the evidence on which they rely "to show that renovation activity continued throughout 2018." It then lists three categories of items.

- (a) The first is a collection of six invoices from Canada Brightway Shipping Ltd. to Golden Chateau Building Materials Inc. They are dated in 2017-2019, with just two in 2018. The materials the invoices refer to range from bathroom accessories, to limestone products, stainless steel products, wood cutting equipment and various other things. No explanation of what these purchases involved and, indeed, whether they actually made it and were incorporated into the Property has been provided.
- (b) The second item is an electrical permit obtained late in June 2018. It does not evidence work actually done in 2018, just an authorization to proceed with certain electrical work. Further, the absence of interim or final electrical inspections does not establish diligence or absence of unnecessary delay. Rather, it shows the opposite.
- (c) The third items included were CIBC Visa statements on an account of one of the Owners for similar periods of time in and around 2018 showing payments for rental of portable toilets, supplies of lumber, stone products, power tools, fasteners and the like. The total spent is modest and not what one would expect from a major renovation project of this size. Also, the lack of any explanation in writing about what these items were for is notable and works against the Owners. It was obviously in their power, for example, to explain what they acquired at Home Depot or Ikea and how that related to the major renovations work on the Property, but they did not do so.

The evidence also included 27 photographs of the Property and renovation project. The date they were taken is not clear, but the metadata shows "date modified" of June 17, 2021. While that is not 2018, the photographs of the interior show it still in an unfinished state, with the studs still showing in part and plywood on other parts (e.g., photo 0615_22). Whether from 2021 or 2018, these seem to confirm that work was incomplete 2018 and substantial work remained to be done. That hardly assists the Owners in establishing that they were doing major renovations during 2018 requiring that the Property had to remain unoccupied, that they were pursuing that work diligently and without unnecessary delay through at least 6 months of 2018.

It is odd as well that the Owners did not provide any report from a general contractor with information or copies of a daily construction log book or similar narrative as to what was actually being done in 2018. The invoices, electrical permit, Visa bills and photographs do not establish diligence or lack of

delay. Providing such a narrative explaining what they were doing in 2018 was within the Owners power.

The absence of such evidence undermines the Owners' argument for exemption from the Vacancy Tax.

Conclusion

The Panel finds that the opinions expressed by Building Department personnel are based in fact and support a finding that the major renovation work on the Property in 2018, alleged to have justified it remaining unoccupied that year, was not conducted diligently and without unnecessary delay.

The Panel finds that the Building Department personnel referred to in the evidence were acting for the Chief Building Official in conducting investigations, reviewing materials and providing the opinion just noted. The Panel rejects the contention of the Owners that only the Chief Building Official could provide such an opinion.

In any event, the Panel finds that it was the obligation of the Owners to demonstrate that the Property came within the exemption referred to in section 3.2(a)(ii) and that they failed to do so. Among other things, they failed to make any efforts to get an opinion directly from the Chief Building Official and failed, on the evidence presented, to establish diligence and lack of unnecessary delay concerning work done in 2018.

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under section 3.2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to use and occupation by owners or others related to them as their principal residence or for the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the above noted property.

Review Determination: DENIED



Panel: Robert D. Holmes, K.C.

Date: March 11, 2024

The City of Vancouver Vacancy Tax Review Panel Decision

Date: March 11, 2024

File Number: RC-2022-00036

Requestors: s.22(1)
(the "Owner")
s.22(1)

Vacancy Reference Year: 2018

Folio: s.22(1)

Civic Address: s.22(1)
(the "Property")

Introduction

At the request of the Owner, The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Overview

This case concerns a situation where the Owner, s.22(1)
s.22(1)

s.22(1) Neither took up the
Property as their principal residence for either the 2017 or 2018 Vacancy Reference Years.

Procedural History

Audit of Owner's Declaration Initiated

By a letter dated June 24, 2019, the Vacancy Tax Office informed the Owner that the declaration of exempt status concerning the Property filed by or on behalf of the Owner was being audited. The basis for the exemption claimed was that the Owner s.22(1)

The Vacancy Tax Office letter required that the Owner complete a questionnaire and supply copies of relevant documents in support of the exemption from the Vacancy Tax that the Owner claimed for the 2018 Vacancy Reference Year.

The Auditor's file notes refer to contact with the Owner on or about October 13, 2021. By that point a pre-determination assessment of the claim for exemption had been made and was unfavourable to the Owner.

The Owner requested that the Auditor review the information supplied for the 2017 Vacancy Reference Year audit. There, the evidence "s.22(1)"

The declaration made by the Owner for the 2018 Vacancy Reference Year was to the effect s.22(1) Evidence was not submitted to support this answer.

The Auditor explained the requirements for an exemption based on s.22(1) as summarized in the Auditor's notes as follows:

Auditor explained that the 2017 evidence showed s.22(1)

Auditor explained the Vacancy Tax By-Law Section 3.3 requires occupiers to previously live in the residence prior to going into s.22(1), as such the exemption does not apply in 2018.

The 2017 audit and related proceedings went against the Owner. The declaration seeking exemption from the Vacancy Tax for that Vacancy Reference Year was found to be non-compliant and, on the review, conducted after a Notice of Complaint was filed by the Owner, the review determination was that the exemption was not applicable and the Vacancy Tax was properly imposed and owing.

The Owner's position was that the Property remained the principal residence of s.22(1). Unfortunately, she did not provide supporting evidence for that contention.

By emails dated August 21, 2019 and January 2, 2020 and by a letter dated September 23, 2021, the Owner was informed by the Auditor that evidence compliant with the requirements of the exemption that was claimed had to be produced:

Please provide the following primary documents:

- A letter (on official letterhead) from s.22(1)
- Evidence to support the audited property was occupied by the individual s.22(1) including but not limited to:
 - Valid BCID, BC Services card

- o Government Correspondence (CRA documents, CPP or OAS statements) addressed to the audited property
- o Other document(s) in the name of the property owner, establishing the audited property as their residence s.22(1)

The Owner responded by email dated August 21, 2019 noting that she had requested a review of the determination made for the 2017 Vacancy Reference Period and asked that time for responding further concerning the 2018 Vacancy Reference Period be extended. By an email August 21, 2019, the Vacancy Tax Office noted the request and agreed to the extension. In the January 2, 2020 email from the Vacancy Tax Office, they noted for the Owner that no request for review had yet been made. The Owner replied, "I submitted the request for review in July 2019." By an email dated January 17, 2020, the Vacancy Tax Office replied that "Your initial request for review was not filed in July of 2019. As such, the external Review Panel will need to review the matter and advise if the request can be re-submitted at this stage." The Owner responded that day saying, "Reason for not filing by deadline: I uploaded it to your website late June/early July. Perhaps you could advise both me and the reviewer why your website rejected it." The Vacancy Tax Office responded January 17, 2020 to the Owner saying, "If you have not done so already, kindly forward your request for review to VacancyTaxReview@vancouver.ca. This is an independent review not undertaken by this office."

By its September 23, 2021 email to the Owner, the Vacancy Tax Office advised that "The review panel for the 2017 vacancy tax year (RC-2019-00071) concluded September 8, 2021 and the review determination was sent to you on September 9, 2021. As the 2017 review has completed, the 2018 audit s.22(1) will proceed." The request for documentation to support the claimed exemption was made again, as set out above.

Simply put, the Owner did not supply evidence to show s.22(1) as they had not actually taken up residence in the Property at any time.

The Owner did supply s.22(1) The Auditor's notes and evaluation of that are as follows:

s.22(1)

s.22(1)

Evidence does not appropriately support this exemption in 2018, as the permitted s.22(1) without making the audited property their principal residence.

The Owner provided letters (October 6 and 16, 2021) indicating that the Property was not occupied by s.22(1)

Unfortunately, that is not so.

The Owner also set out her position that the imposition of the Vacancy Tax on the Property was unfair. In her October 6, 2021 letter she explained her position as follows:

You have requested documentation regarding my declaration of exemption from the vacancy tax for 2018. The documents for 2018 are the same as those for 2017, which you rejected without the right to appeal, as you found it not compelling that s.22(1) [REDACTED]. Nor did you find it unfair or inappropriate that the vacancy tax people told me in 2019 that s.22(1) [REDACTED]

Since 2019, in order to comply with the city regulations, and since s.22(1) [REDACTED] does not have rights, I have rented s.22(1) [REDACTED] to the following people: 1. Broke the lease and s.22(1) [REDACTED] 2. Had COVID parties to 4AM 3. Wrecked s.22(1) [REDACTED] (carpet, mattress, washing machine, fridge, all of the wine glasses [ALL of them!]). It is, shall we say, curious to me that these people have rights and s.22(1) [REDACTED] apparently does not.

The vacancy tax is purportedly to help the housing situation in Vancouver. However, I have not noticed that, despite renting to the above citizens, any decrease has been made to the tent city in Crab Park, the number of people sleeping on our street, or the number of people pooping in our doorway; to the contrary, all of these have increased. I can only conclude, then, that the vacancy tax is a cynical money grab.

Please be very clear that you are cynically grabbing money away from the care s.22(1) [REDACTED]

Audit Determination

By a letter dated October 13, 2021, the Auditor explained that because the Owner's s.22(1) [REDACTED] had not resided in the Property prior to s.22(1) [REDACTED] the exemption was not applicable and the Property was subject to the Vacancy Tax.

s.22(1) [REDACTED]

For the purposes of the Vacancy Tax bylaw, you can have only one principal residence and if you have more than one, you cannot designate which one is your principal residence.

According to the bylaw, a "principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills.

The evidence submitted for this audit directed to use the 2017 audit evidence for the 2018 audit.

The 2017 evidence advised that s.22(1)

Based on the evidence provided to date, we do not consider that this property is exempt from the vacancy tax as we have not been able to establish that this property was the principal residence s.22(1)

The October 13, 2021 letter concluded by stating that the Owner had until October 23, 2021 to provide such further evidence.

In her October 16, 2021 letter, the Owner set out the following additional thoughts and comments about how unfair she regarded the imposition of the Vacancy Tax here:

"Thank you for your voice mail. I can't speak to you on the phone right now about this, the s.22(1)

Here is my additional information:

The Vacancy Tax ruling is using the letter of the bylaw to force me to:

1. s.22(1)
2. Pay a tax that impacts on the s.22(1)

Either of these circumstances amounts to exploitation of s.22(1)

In this particular case, strict adherence to the bylaw sends a clear message that the rights of the irresponsible tenants overrule the rights of the s.22(1) It adheres to the letter of the bylaw but not, I hope, the spirit, as it amounts to s.22(1) . It is a Human Rights issue. Surely the City of Vancouver cannot be so callous and cynical as to enforce the letter of the bylaw at the expense of exploiting s.22(1)

3. I will repeat that the Vacancy Tax office informed me in January 2019 that my s.22(1)

I can show you the records if you wish. Please note that I/they are not making any money on this as I have to keep replacing the items, including major appliances, that are regularly stolen or wrecked by the tenants.

4. Back-taxing this apartment to 2017, 2 years before I was told that the intention of the Vacancy Tax office was to s.22(1) s.22(1)

I am sending a photo of the s.22(1) that this ruling affects.”

The evidence included two photos of the Owner’s s.22(1)
s.22(1)

The Auditor considered whether the s.22(1) provision in the Vacancy Tax Bylaw. However, that provision applies only where a registered owner of property s.22(1). The Owner’s s.22(1) and so that exemption too did not apply.

Presumably because the Owner had responded to the October 13, 2021 letter, the Auditor completed the audit without waiting until after the October 23, 2021 deadline. By a letter dated October 18, 2021, the Auditor confirmed that the results of the audit were that the Vacancy Tax applied to the Property for the 2018 Vacancy Reference Year:

The reason(s) for our non-compliant conclusion are as follows:

Inappropriate Evidence

Based on the evidence provided, the City determines that the property was unoccupied for more than 6 months in 2018, as the occupiers declared as permitted occupants did not previously occupy the residential property as their principal residence s.22(1) per Section 3.3 of the Vacancy Tax By-Law (No.11674).

Owner Initiates Vacancy Tax Review Officer Process

The Owner did not accept or agree with that result. By a letter dated November 26, 2021 to the Vacancy Tax Office, she set out the following as her position:

“I’m writing to register my deep disapproval regarding the decision of the vacancy tax auditor for 2017 and 2018 for this property.

This property was bought in s.22(1)
s.22(1)

Since the vacancy tax office informed me in January 2019, that the property is not exempt, I’ve made a concerted effort to rent the apartment s.22(1) So far, and despite hiring a professional rental agency, the series of tenants in this apartment have: broken the lease; stolen from the apartment; broken the washing machine; broken the fridge; broken the bathroom fan;

broken all the wine glasses (ALL of them); had loud pre-vaccine COVID parties until 4AM; and left the fireplace on for at least six weeks (it's a wonder they did not burn down the building).

The decision of the vacancy tax adjudicator has left me with three options: 1. Rent to people who steal and wreck s.22(1) and deal with them breaking appliances, which is detrimental to s.22(1). 2. Pay the tax, which is detrimental to s.22(1) and 3. Sell the property at a loss (the property values in this neighbourhood have diminished since COVID due to chaos and crime on the street), which is detrimental to s.22(1). In short, the vacancy tax office is penalizing s.22(1). One of them had the audacity to s.22(1) one has to wonder if there is a surcharge for that?

My questions, which the adjudicator has deemed 'inappropriate' are these; does the City of Vancouver truly intend to enforce a bylaw to the letter of the law, even though it is to the detriment of s.22(1)? Do the people who steal and ruin the possessions of these s.22(1) truly have more rights than they do? Is it appropriate to apply this lack of exemption retroactively to 2 years prior to informing one of the lack of exemption? Is this the kinder, gentler attitude of the City toward s.22(1) that is appropriate in 2021?

I find it ironic that s.22(1) and yet my attempts to defend s.22(1) have been deemed, in official correspondence, to be 'inappropriate'. The vacancy tax adjudicator's position is inappropriate. Willfully compromising s.22(1) is inappropriate. I expect this decision to be reversed for both 2018 and 2017.

Thank you for your help."

By a letter dated December 18, 2021, the Owner explained the circumstances further:

s.22(1)

By an email from the Vacancy Tax Office dated December 20, 2021 addressed to the Owner, her request that a Notice of Complaint about the adverse determination by the Auditor be filed was noted. The process of having the audit results reviewed by a Vacancy Tax Office Review Officer was initiated.

By a letter dated December 26, 2021, the Owner provided her Notice of Complaint concerning the audit and triggered the review process before a Vacancy Tax Review Officer. She continued to express her frustration and upset with the Vacancy Tax being imposed on the Property in the circumstances and the process she had to go through to raise her concerns.

The audit file notes the following regarding the situation:

As the permitted occupants' being declared in the 2018 declaration did not make the property their principal residence s.22(1) exemption does not apply.

Per s.22(1) of the Vacancy Tax By-Law:

s.22(1)

In an email exchange leading up to January 14, 2022, the Owner inquired if the Notice of Complaint process had indeed been started and that was confirmed. The Owner was informed that documentation was required to support the statements that were made in the letters she had sent. An extension of time to February 25, 2022 was permitted.

Vacancy Tax Review Officer Determination

By a letter dated January 27, 2022 from the Vacancy Tax Review Officer, the Owner was advised that the initial review of the file did not support a claim for an exemption. The Owner was afforded further time to explain and provide evidence for an exemption, if one was available. The letter reads thus:

We received the letter you submitted with regards to the property s.22(1). The Vacancy Tax bylaw states that a vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than 180 days during the vacancy reference period because:

"all occupiers who were previously occupying the residential property as a principal residence or all tenants or subtenants who were previously occupying the residential property for residential purposes are s.22(1)

s.22(1)

s.22(1) For the purposes of the Vacancy Tax bylaw, you can have only one principal residence and if you have more than one, you cannot designate which one is your principal residence. According to the bylaw, a "principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills.

Based on the evidence provided to date, we do not consider that this property is exempt from the Vacancy Tax, as we have not been able to establish that this property was the principal residence

s.22(1)

During the audit, and in your letter, you state that your s.22(1) Although the intent may have been for them to occupy the property, the audit determination is made based on the actual occupancy status of the property. Since your s.22(1) did not occupy the property as a principal residence s.22(1) the exemption does not apply.

Further information on the vacancy tax can be found here: <https://vancouver.ca/home-property-development/will-your-home-be-taxed.aspx>

Please let us know if you consider that you have additional information that you can provide to show that your property is exempt under the Vacancy Tax Bylaw.

If we do not hear back from you within 10 business days, we will proceed with determining your audit on the basis of the information that we have received to date.

Please log-on to vancouver.ca/ehc-compliance to submit additional information by the submission deadline.

For more information on the Empty Homes Tax, please visit vancouver.ca/ehc or call 3-1-1.

By a letter dated February 9, 2022, the Owner set out her position concerning the circumstances and the review:

"Thank you for your letter of Jan 27, 2022, which I received yesterday (Feb 8), requesting more evidence in support of s.22(1) being declared exempt from this tax for 2018.

s.22(1)

§.22(1)

§.22(1)

The Review Officer's ultimate determination was against the Owner's claim for an exemption. By a letter to the Owner dated March 30, 2022, the Review Officer explained the reasons for that as follows:

The reasons for the determination are as follows:

Based on the evidence provided, the Vacancy Tax Review Officer determines that this property is not eligible for the §.22(1) exemption for the 2018 vacancy reference period. Properties are only eligible for this exemption if it was unoccupied for more than six months in the vacancy reference period because all occupiers who were previously occupying the property as a principal residence §.22(1)

§.22(1) This exemption is only available for two consecutive vacancy reference periods.

The evidence provided does not support that the property was previously occupied by occupiers as a principal residence §.22(1) §.22(1) and therefore, does not meet the requirements of the exemption in Section 3.3 of the Vacancy Tax By-Law.

A "principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation,

income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence.

If the property is not the principal residence of an occupier or tenanted for at least six months of the vacancy reference period, and does not qualify for an exemption, it is considered vacant and the Vacancy Tax will apply.

The Owner disagreed with that result and sought to have the matter reviewed and determined by this review process before the Panel.

Issue for Determination on this Review

Is there an exemption from the Vacancy Tax in situations where, s.22(1)
s.22(1)

Discussion and Analysis

s.22(1)

s.22(1)

The City and the Owner agree that on the facts here the Owner's s.22(1) and occupied the Property. The Owner protests that the spirit and intention of the Bylaw's exemption from the Vacancy Tax for s.22(1) fairly to apply here. The Vacancy Tax Review Officer determined that the language of the Bylaw did not permit that exemption to apply.

s.22(1)

The Vacancy Tax Bylaw s.22(1) in question here bears repeating here:

s.22(1)

§ 22(1)

The question, on the express language of the Bylaw is whether the Owner's § 22(1) "were previously occupying the residential property as a principal residence."

The definition of principal residence in the Bylaw reads thus:

"principal residence" means the usual place where an individual lives, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence;

Standards of Statutory Interpretation

The law relating to the interpretation of statutes applies to the interpretation of the Vacancy Tax Bylaw. In *Bell Express'U Limited Partnership v. Rex*, 2002 SCC 42, Iacobucci, J., for the Supreme Court of Canada, quoted at length from texts and prior case law but came to rest on this principle:

26 In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

He went on to note that "in the federal legislative context, this Court's preferred approach is buttressed by s. 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides that every enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects". With regard to the Vacancy Tax Bylaw, the BC Interpretation Act applies to assist in interpretation. It has a parallel provision to the federal one in section 8: "Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."

Where there is ambiguity courts can and do look beyond the text of the words in a statute. The aim is to determine which is the appropriate meaning to give the words. But, as Iacobucci, J., states at para. 29, in order to apply principles for resolving ambiguity, there must be an ambiguity to start off with:

- 29 What, then, in law is an ambiguity? To answer, an ambiguity must be “real” (*Marcotte, supra*, at p. 115). The words of the provision must be “reasonably capable of more than one meaning” (*Westminster Bank Ltd. v. Zang*, [1966] A.C. 182 (H.L.), at p. 222, *per* Lord Reid). By necessity, however, one must consider the “entire context” of a provision before one can determine if it is reasonably capable of multiple interpretations. In this regard, Major J.’s statement in *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, 1999 CanLII 680 (SCC), [1999] 1 S.C.R. 743, at para. 14, is apposite: “It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids” (emphasis added), to which I would add, “including other principles of interpretation”.

In the present context, the Panel is dealing with a taxing provision in a bylaw. The law used to be that such provisions were construed strictly against the taxing authority when they involve the imposition of a tax. See, for example, the discussion by Estey, J., in *Stubart* at p. 577: “any ambiguities in the charging provisions of a tax statute were to be resolved in favour of the taxpayer; the taxing statute was classified as a penal statute.” But equally so, with claims for exemptions, taxpayers were accorded no favors: “Where the taxpayer sought to rely on a specific exemption or deduction provided in the statute, the strict rule required that the taxpayer’s claim fall clearly within the exempting provision, and any doubt would there be resolved in favour of the Crown. See *Lumbers v. Minister of National Revenue* (1943), 2 DTC 631 (Ex.Ct.), affirmed 1944 CanLII 52 (SCC), [1944] S.C.R. 167; and *W.A. Sheaffer Pen Co. v. Minister of National Revenue*, 1953 CanLII 758 (CA EXC), [1953] Ex. C.R. 251. Indeed, the introduction of exemptions and allowances was the beginning of the end of the reign of the strict rule.”

In the result in the *Stubart* case, the Supreme Court rejected the “literal” approach to construing tax statutes and shifted interpretation somewhat so as to allow for a somewhat more liberal approach. That approach involved looking at the words in question in the total context of the taxing statute. The purpose of doing so was to ensure that the objective and spirit of the statute were applied.

In the recent case of *Deans Knight Income Corp. v. Canada*, 2023 SCC 16, however, the Supreme Court noted that what remained was a general principle drawn from a decision of the House of Lords:

[46] In *Commissioners of Inland Revenue v. Duke of Westminster*, [1936] A.C. 1 (H.L.), Lord Tomlin recognized the foundational principle that “[e]very man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be” (p. 19). The principle that taxpayers can order their affairs to minimize the amount of tax payable has been affirmed by this Court on numerous occasions (see, e.g., *Stubart*, at p. 552; *Trustco*, at para. 11; *Copthorne*, at para. 65).

Further, the law provides that a taxpayer seeking an exemption from tax is usually deemed to have the burden of proving factual matters required to establish the exemption. Of course, that applies to factual

matters and not to interpretation of the law. There is no burden on any party with respect to interpreting the law. That is the role of the adjudicator.

The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.*, 2006 SCC 20. At para. 26, the court noted that “The fundamental rules on the allocation of evidentiary burden in this matter remain valid.... The taxpayer bears the burden of displacing the Minister’s factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law. At para. 29, the court added that: “the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it — the duty to ascertain the correct interpretation lies with the court.”

In this case, however, the taxpayer has been forthright and candid about the situation. She did not try to manufacture evidence that went beyond what actually happened. s.22(1)

s.22(1)

s.22(1)

Does s.22(1) Allow for an Extended Meaning Based on s.22(1) ?

Where does that leave matters as concerns the interpretation of Vacancy Tax Bylaw s.22(1) ? Unfortunately, the phrase “who were previously occupying the residential property as a principal residence” simply does not fit with what happened here so as to allow the exemption to apply. If the phrase had instead focused just on intentions, perhaps it might have. Also, if circumstances had been such that either or both of the s.22(1)

s.22(1)

that the phrase “previously occupying” does not have a duration attached to it in the statute. But “occupying” must be given its meaning and it means they (or one of them) actually occupied the Property for some period of time before s.22(1)

There does not appear to be any way around those clear provisions of the Vacancy Tax Bylaw. While one may feel sympathy for the Owner, s.22(1)

s.22(1)

things did not

work out that way.

The art of drafting bylaws, as with statutes and regulations, involve drawing lines. The unfortunate truth of doing so is that some deserving persons will fall outside the lines and some undeserving ones will fall within them.

The point may be illustrated by the rather limited exemption allowed by section 3.11 of the Vacancy Tax Bylaw. It deals with situations where someone has a principal residence outside of Vancouver but maintains a residence in Vancouver s.22(1)

3.11 A vacancy tax is not payable under this by-law for a parcel of residential property if the principal residence of the registered owner during the vacancy reference period was outside of Greater Vancouver, but the residential property was periodically occupied by the registered owner, their spouse or dependent for a medical reason, except that in order to claim an exemption under this section, the registered owner must file a document that is completed by a medical practitioner, and must be filed using a form as prescribed by the City of Vancouver.

But on its own terms, it only applies to the “registered owner” of property outside Vancouver and the use of the residential property in Vancouver for “the registered owner, their spouse or dependent for a medical reason.” s.22(1)

[REDACTED]. It would not assist the Owner in this case even if it did go that far. Here, the Owner s.22(1) and wanted to have s.22(1) s.22(1) could provide for their s.22(1). Again, why this provision was not drafted to allow for that is unknown or at least unclear.

Whether Vancouver City Council decides to review s.22(1) based upon experiences such as the present case is for it to decide and is beyond the role of the Panel.

There is no exemption under section 3.11, s.22(1) or elsewhere in the Vacancy Tax Bylaw based on compassionate grounds.

Conclusion

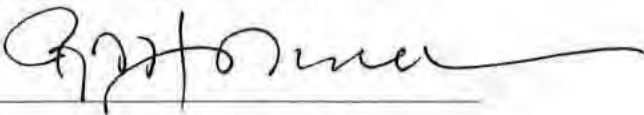
What is clear, regrettably, is that the intentions of the Owner and s.22(1) that did not come to fruition with s.22(1) not qualify under s.22(1) or any other provision of the Vacancy Tax Bylaw to provide an exemption from the Vacancy Tax for the Property. In the circumstances, that means that the Owner’s claim for an exemption from the Vacancy Tax must be denied.

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel’s final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under section 3.2 of the Bylaw.

File Number: RC-2022-00036

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the above noted property.

Review Determination: DENIED

A handwritten signature in black ink, appearing to read "R. Holmes", written over a horizontal line.

Panel: Robert D. Holmes, K.C.

Date: March 11, 2024

The City of Vancouver Vacancy Tax Review Panel Decision

Date: November 26, 2023

File Number: RC-2022-00051

Requestor: s.22(1)

Vacancy Reference Year: 2020

Civic Address: s.22(1)

Folio: s.22(1)

[1] At the request of a property owner, The Vacancy Tax Review Panel has conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City of Vancouver ("City") and the property owner claiming exemption. In conducting its review, the Panel has considered the wording and context of the relevant portions of the bylaw, and weighed all the evidence, predicated on a balance of probabilities.

Factual and Procedural History:

[2] In 2017 the property owner purchased what were then s.22(1) purpose of their redevelopment into a s.22(1) s.22(1), as required by a rezoning that was approved in September 2019. A development permit application was completed and submitted in September 2018 and at the times relevant to this decision was still awaiting City approval. An application for a building permit was submitted on July 24, 2019, and at the times relevant to this decision was under review and not issued.

[3] From a review of the material, it is clear that the delay in issuing the building permit is not due to lack of diligence by the property owner, but to a combination of factors, including resolution of engineering conditions, an expanded requirement for off-site civil works, an approval under the City's Rainwater Management Plan, and delays in the City's review process brought on by the COVID pandemic and staffing changes. In particular, the scope of the off-site works significantly expanded in scale and was costly. This information was not communicated to the property owner until two weeks prior to the finalization of the report to council for the scheduled public hearing. The property owner expressed concerns to the planning and engineering departments. It states it was provided with little time and opportunity to negotiate with the relevant City departments prior to the finalization to council. Nevertheless, it agreed to the new conditions to move the project forward.

[4] The property owner also applied on multiple occasions in late 2019 and in 2020 for Salvage and Abatement and demolition permits for the three existing houses on the consolidated property, but the City building department did not issue them, advising the property owner that it was too early to do so. The department's position is that Salvage and Abatement and demolition permits are not issued until the development and building permits are near issuance.

[5] The property owner states that s.22(1) as to be s.22(1) during the whole period from purchase through the approval process. The third was initially rented until August 2019, when notice was given to vacate in preparation for demolition, but when the permits were not issued, then used by the property owner for as an office for staff. The owner placed fencing around the existing homes, using the fencing as advertising for the future development.

[6] By a letter of May 20, 2021, the property owner was advised that its property declaration for 2020, in which it had claimed an exemption under section 3.2 of the Vacancy Tax Bylaw, (the "Bylaw") had been selected for audit. After review the exemption was denied and the property owner notified by letter of August 11, 2021. The property owner filed a Notice of Complaint under the Bylaw for review by a Vacancy Tax Review Officer who ultimately upheld the original decision to deny the exemption and impose the Vacancy Tax. The property owner then sought a further review from this Panel.

The Bylaw Provisions:

[7] In order to understand the basis for the audit and Review Officer decisions it is necessary to set out Section 3.2 of the Bylaw.

Property undergoing redevelopment or major renovations

3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

- (a) redevelop or safely carry out major renovations to the property:
 - i. for which permits have been issued by the City in the vacancy reference period, and
 - ii. which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay, or;
- (b) carry out either redevelopment or initial development of residential property that is unimproved with any dwelling units, or the rehabilitation and conservation of heritage property:
 - i. for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City in the vacancy reference period, and

- ii. which, in the opinion of the General Manager of Development, Buildings and Licensing or the General Manager's delegates, is being diligently pursued and without unnecessary delay, or;
- (c) carry out either redevelopment or initial development of a parcel of residential property which is unimproved with any dwelling units and is part of a phased development which either:
 - i. has not been rezoned, where a complete rezoning enquiry or rezoning application for at least one of the parcels of residential property which comprise the phased development has been submitted by or on behalf of the registered owner and is under review by the City in the vacancy reference period, or
 - ii. has been rezoned, where either:
 - (A) a complete development permit application has been submitted for at least one parcel of residential property which is part of the phased development and is under review by the City in the vacancy reference period; or
 - (B) a development permit has been issued by the City for at least one parcel of residential property which is part of the phased development and work under the development permit is, in the opinion of the General Manager of Development, Buildings and Licensing or the General Manager's delegates, being diligently pursued and without unnecessary delay.

Audit Decision:

[8] The rationale for imposing the Vacancy Tax in the original audit was expressed:

Based on the information and documents you submitted, we have determined that your property status declaration is non-compliant and your property is subject to the Vacancy Tax.

The reasons for our non-compliant conclusion is as follows:

-Inappropriate Evidence

Based on the evidence provided, the City determines that this property does not qualify for the 'Property undergoing redevelopment or major renovations' exemption on the basis that renovations with permits issued by the City did not prevent occupancy for at least six months of the vacancy reference period.

Vacancy Tax Review Officer Decision:

[9] The relevant portions of the Review Officer's decision are:

Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in the vacancy reference period was not because it

was carrying out redevelopment or initial development of residential property that is unimproved with any dwelling units, for which a development permit application is under review by the City. To be eligible for an exemption under section 3.2(b) of the Vacancy Tax By-Law, the property must be vacant land with a development permit under review by the City by July 1st of the vacancy reference period.

Although a development permit (DP-2018-00834) was under review by July 1, 2020, the property was not vacant land and therefore, it is not eligible for the "Property undergoing redevelopment or major renovation" exemption under Section 3.2(b) of the Vacancy Tax By-Law.

A property that is "unimproved with any dwelling units" means any property that is vacant land with no existing building. If there is an existing building on the property, then the exemption in section 3.2(b) does not apply. There is no exemption for a property that is unoccupied solely because the building is in a state of disrepair and not in a condition for people to live in, unless it is undergoing redevelopment or renovation with an issued building permit pursuant to section 3.2(a) of the Vacancy Tax By-Law.

If the property is not the principal residence of an occupier or tenanted for at least six months of the vacancy reference period, and does not qualify for an exemption, it is considered vacant and the Vacancy Tax will apply.

Analysis:

[10] The task of this Panel is to interpret the Bylaw and apply it to the facts of this case. In doing so the Panel is able to look at the whole of the evidence afresh, and is not limited to a strict review of the correctness or reasonableness of the audit and Review Officer decisions. Nevertheless, the Panel must decide whether it agrees with that reasoning on the evidence or not.

[11] Bylaws are a form of legislation passed by local governments, in this case the City. The principles for interpreting legislation in Canada, universally adopted by Canadian courts and administrative decision-makers, are "... namely, the words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and the object of the Act and the intention of [the lawmaker]". (See E. A. Dreidger *The Construction of Statutes*, 1974, p. 67)

[12] A recent decision of the BC Supreme Court, *Belmont Nominee Ltd. v. Vancouver (City)*, 2021 BCSC 2492, also comments on how legislation is to be interpreted:

[71] Administrative decision-makers interpreting legislative provisions must consider the text, context and purpose of the provisions in order to arrive at the authentic meaning of the provision: see *Hillier v. Canada (Attorney General)*, 2019 FCA 44. This is not a new proposition. *Vavilov [Canada (Minister of Citizenship and Immigration) v. Vavilov]*, 2019 SCC 65] is the recent word from the Supreme Court of Canada, emphasizing that legislative intent "can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context" (para. 118). Where the meaning of a statutory provision is disputed, "the decision maker must demonstrate in its reasons that it was alive to these essential elements" (para. 120). Indeed, the administrative decision-maker's task is to discern the meaning and legislative intent of the contested provision, "while applying its particular insight into the statutory scheme" (para. 121).

[13] Section 3.2 sets out three situations in which an exemption can be claimed where a property is not occupied for six months.

- (a) The first is where the property is *not* vacant land; meaning it has an existing dwelling on it; and a building permit has been issued (not just applied for) and development or renovation work is, in the opinion of the Chief Building Inspector, being “carried out diligently and without unnecessary delay”.
- (b) The second is where the property *is* vacant land “for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City in the vacancy reference period” and in the opinion of the Chief Building Inspector “being diligently pursued and without unnecessary delay”.
- (c) The third is for a phased development of vacant land and not applicable here.

[14] Unfortunately for the property owner, neither of the first two exemptions apply. No building permit has been issued, so the first exemption for property with existing dwellings also does not cover this situation. The property is not vacant land, so the exemption it might otherwise claim under its application for a development permit also does not provide a basis to exempt.

[15] In *Belmont*, the court noted the underlying reason for the Section 3.2(b) exemption, saying:

[14] The City enacted s. 3.2(b) after considering an Administrative Report dated June 20, 2017 setting out the basis for the new provision. After explaining the rationale for s. 3.2(a), the Administrative Report states the following:

...in the case of vacant unimproved lands that have no dwellings on-site and whose owners are diligently proceeding with adevelopment permit application, it is not possible for the property to be occupied in accordance with the requirements of the by-law. Therefore, staff recommend an amendment to the Vacancy Tax By-Law to exempt vacant lands that are not improved with any dwelling units if the owner has submitted a complete ... development permit application to create housing supply, provided that the application is being diligently pursued by the applicant. ... Vacant unimproved properties that are not in the development review process will continue to attract the [empty housing tax] as an incentive for owners to move forward with the creation of housing supply. [emphasis added]

[16] The property owner has set out in detail the many efforts it has made to obtain the building permit. The delays are not from its lack of diligence in seeking it. But, unfortunately for the property owner, the Bylaw wording on its grammatical and ordinary reading is clear. A permit must have been issued by the City in the vacancy reference period. The reasons for non-issuance, in this case largely due to the City’s permit review process and delays from the pandemic, are not relevant. Similarly, with the second exemption, the City’s refusal

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to issue permits to demolish the existing structures is not relevant. As the *Belmont* case notes, the property must, in the vacancy reference period, be vacant land, "unimproved with any dwelling units". A thwarted desire to make it so is not sufficient. While the Panel can have sympathy for the property owner, this cannot override the clear wording of the Bylaw.

[17] Also not relevant is the apparent fact that at least two of the existing dwellings are not safely habitable through no fault of the property owner. Vacancy Tax is still payable just as it is with vacant land that sits idle.

[18] As a result I agree with the conclusions of the audit and the Vacancy Tax Review Officer decisions.

Conclusion:

[19] Having reviewed the relevant provisions of the Bylaw for the claimed exemption and the property owner's submissions, and having considered all evidence put before it, weighed on a balance of probabilities, it is the Panel's final determination that, in the circumstances of this case, they are neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under section 3.2 of the Bylaw. The Panel has arrived at a final determination that Vacancy Tax is properly imposed on the above-noted property.

Review Determination: DENIED



Panel: Michael F. Welsh, K.C.

Date: November 26, 2023

The City of Vancouver Vacancy Tax Review Panel Decision

Date: January 29, 2024

File Number: RC-2022-00059

Requestor: s.22(1)
Civic Address: s.22(1)

Vacancy Reference Year: 2020

Folio: s.22(1)

The requestor ("property owner") seeks an independent adjudicative review of an August 10, 2022 decision of the Vacancy Tax Review Officer which found that the Property was subject to the Vacancy Tax.

The Review Officer determined that there was insufficient evidence to determine that the Property was occupied for residential purposes by an arm's length tenant or subtenant under a tenancy agreement, for a term of at least 30 consecutive days, for at least six months in the vacancy reference period.

In accordance with the Vacancy Tax Review Adjudication process, the Panel has reviewed all the evidence submitted by both the City and the property owner. The Panel finds, on a balance of probabilities, that the Property does not qualify for an exemption under the *Vacancy Tax By-Law*. (the *By-Law*)

Background

The Property is a s.22(1) owned during the reference period by a numbered company operating as s.22(1). From August 2, 2018 until June 17, 2021, the corporate directors were s.22(1) s.22(1).

On February 2, 2021, the property owner declared the Property exempt from the vacancy tax for the 2020 tax year on the basis that it was occupied for residential purposes by an arm's length tenant under a tenancy agreement, or by an arm's length subtenant under a sublease agreement, for a term of at least 30 days.

On May 4, 2021, the Vacancy Tax Department informed the property owner that the declaration had been selected for an audit and asked the owner to provide information and evidence in support of the declaration.

The property owner submitted a copy of a 2019 Business License for s.22(1) with the address of the Property, the property owner's financial statements and an office lease agreement for executive space dated August 1, 2012.

In a series of letters dated March 7, 2021, April 4, 2021, June 21, 2021, November 5, 2021, December 2, 2021 the Vacancy Tax office advised the property owner that the information provided did not establish the use of the premises as residential and sought additional information in support of the declaration.

In a letter dated May 28, 2021, a compliance analyst with the Vacancy Tax department informed s.22(1) that the Business License specified the business as an Office, that the financial statement did not contain any rental revenue for the 2020 reference period, and that the lease agreement prohibited the premises from being used as residential space. The property owner was invited to provide additional information to demonstrate that the

Property was exempt. The audit notes indicate that on May 28, 2021, s.22(1) spoke with an auditor explaining that the Property was being used as an office space, and expressing his view that because the Property was zoned live/work, it should not be subject to the vacancy tax.

The Vacancy tax office asked the property owner to clarify if the Property was sub-tenanted, the duration of the period of the sub-tenancy, and whether the sub-tenant paid the original tenant or whether it was collected directly by the owner. The Vacancy Tax office advised the property owner that documents supporting residential use, including monthly rent payments, move in/move out documents from Strata, Strata Form K or third party consent forms from the sub-tenant could be provided as evidence.

s.22(1) emailed the Vacancy Tax office identifying the name of a tenant of the unit, stating, in part, that "s.22(1) has not been in the unit since March 2020." On October 15, 2021, s.22(1) provided the Vacancy Tax office with a copy of a residential tenancy agreement for the Property which indicated a residential tenancy commencement date of April 27, 2020. The tenancy agreement was signed by s.22(1) on behalf of the property owner.

s.22(1) stated:

Hello,

Upon closer look at the tenancy of the unit, I have found that our corporate tenant sublet the unit to a residential tenant on April 27, 2020. They had sublet the unit due to the loss of business in downtown Vancouver as a result of COVID 19 restrictions. Please let me know should you need any further clarification on this.

The Vacancy Tax department again sought additional information regarding the tenancy, including evidence of monthly rent payments and other documentation reflecting residential use. On February 24, 2022, s.22(1) submitted a Form K.

The Vacancy Tax Review Officer determined that the new documents would not have affected the Vacancy Tax department's initial assessment that the Property was not used for residential purposes. The Review Officer noted that, apart from the tenancy agreement, the property owner did not provide evidence supporting residential use such as utility invoices in the tenant's name or any other documents from the tenant, despite repeated requests to do so earlier.

The Review Officer noted:

Given the high risk associated with the fact that the property was originally rented out as an office, the compliance analyst recommends a determination of non-compliance. A third party consent form from the subtenant and documents to support residential use is required.

The Review Officer considered the file to be "high risk" due to the following additional factors:

- Prior period compliance outcomes for use of the property for non-residential purposes;
- Owner stated "upon closer look at the tenancy of the unit, I have found out that our corporate tenant sublet the unit to a residential tenant on April 27, 2020.";
- The Residential Tenancy Agreement for the sub-tenant has the owner "s.22(1)" as the landlord, indicating he already knew about the sub-tenancy since he signed it;

- It was noted that on the website: s.22(1) that the head office is the same as the address on the sub-tenancy agreement, indicating that the initial tenancy may not be arm's length. Per review of the Notice of Articles, the registered owner s.22(1) and the tenant s.22(1).
- February 4, 2022, s.22(1) provided the Vacancy Tax office with a copy of a Form K dated April 30, 2020, a residential tenancy agreement for the Property indicating a tenancy commencement date of April 27, 2020 and a Form K dated April 30, 2020, both of which were signed on behalf of the property owner by s.22(1).

Analysis

Taxpayers seeking an exemption from tax have the burden of establishing the necessary facts to justify the exemption. The Panel task is to ensure that the Vacancy Tax Review Officer has correctly interpreted the *By-Law* in light of the facts before them. (*Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20).

The *By-Law*, like all legislation, is to be interpreted according to the following principle:

Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (E. A. Driedger *The Construction of Statutes*, 1974, p. 67)

The Panel has considered the intention of the *By-Law*, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver.

Section 2.2 of the *By-Law* provides that residential property is considered to be unoccupied in the following circumstances:

- (a) *The residential property is not the principal residence of an occupier; and*
- (b) *The residential property is not occupied for residential purposes by an arm's length tenant under a tenancy agreement, or by an arm's length subtenant under a sublease agreement, for a term of at least 30 consecutive days.*

The *By-Law* defines arm's length to mean:

a tenant or subtenant who is not related to the registered owner by blood, marriage, adoption or common-law partnership, is not a corporation of which an individual registered owner is a director, officer or shareholder, is not a director, officer or shareholder of an incorporated registered owner, and is not a corporation with the same corporate interest holder or holders as the incorporated registered owner, except that if it is determined that non-arm's length parties are treating the tenancy or subtenancy as if it was arm's length, then it will be deemed to be at arm's length

I am not persuaded that the Vacancy Tax Review Officer's decision was in error.

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The Vacancy Tax office repeatedly sought evidence to support the property owner's declaration that the Property was being used for residential purposes. None of the documents initially submitted supported the use of the property as a residence. In fact, the documentation as well as s.22(1) statements to a compliance officer supported a conclusion that the Property was being used as an office.

Although the property owner eventually submitted a Residential tenancy agreement for a tenancy commencing April 30, 2021, the Vacancy Tax Review Officer found the property owner's declaration not credible. I find no fault in this conclusion. Not only had one of the corporate directors told the compliance officer on May 28, 2021, one month after the purported tenancy was to start, that the Property was not being used for residential purposes, s.22(1) wrote in his submission of October 15, 2021, that the tenancy "had just come to light," despite having signed the tenancy agreement six months earlier.

I further note that the corporate records indicate that the registered and records office for the corporate owner, as well as s.22(1) mailing address, was the same as the Property until June 17, 2021. The residential tenancy agreement is difficult to reconcile with these records.

Furthermore, the corporate financial statements (balance sheet and income statement) dated August 31, 2020, do not demonstrate any rental revenue, and the property owner provided no other documents supporting an arm's length tenant, such as move in documents or utility bills, to support residential use.

Decision

Having reviewed the documents submitted by the property owner and the City, as well as the relevant sections of the By-Law, the Panel is not persuaded, on a balance of probabilities, that the property owner is entitled to an exemption from taxation.

Review Determination: DENIED



Panel: C. L. Roberts
Date: January 29, 2024

The City of Vancouver Vacancy Tax Review Panel Decision

Date: April 13, 2024

File Number: RC-2022-00067

Requestor: s.22(1)

Vacancy Reference Year: 2019

Civic Address: s.22(1)

Folio: s.22(1)

s.22(1)

OVERVIEW OF ISSUES:

- [1] This Review Panel decision deals with two issues. The first is the nature and quality of the evidence required to support proof of principal residence where the owner also resides part of the time in a second home. The second is the legal ability of the Collector of Taxes to delegate authority under the By-Law to other City employees and whether such a delegation invalidates a supplementary tax notice.

FACTS:

- [2] The owners of this property s.22(1). One of the owners, s.22(1), (the "female owner") declares that the Vancouver property is her principal residence. s.22(1) s.22(1), (the "male owner") does not. The parties reside primarily in s.22(1) in a residential property they own. The stated reason for s.22(1) s.22(1) They have an s.22(1).
- [3] The female owner in two written statements and a submission by her lawyer provides the following history of her acquisition and use of the Vancouver property.
- [4] The property was purchased in s.22(1). It is a more costly and "more impressive" one than s.22(1). The female owner has s.22(1) in Vancouver, especially s.22(1) s.22(1).
- [5] The female owner, during and after construction, made modifications to the floor plan and interior of the Vancouver property to adapt it to her personal style, and has decorated the residence with her s.22(1) it s.22(1). She states that all of this makes the Vancouver

property s.22(1)

s.22(1)

[6]

s.22(1)

[7]

s.22(1)

[8]

s.22(1)

AUDIT AND VACANCY TAX REVIEW OFFICER (VTRO) DECISIONS:

[9] Both on audit and on VTRO review the property was determined as subject to tax. The main basis for these findings was that the documentary evidence provided (property s.22(1))

[10] At the audit stage “primary evidence” with the subject address such as BCID, a BC driver’s licence, and CRA Notice of Assessment, was requested. The owners responded that as s.22(1)

Alternatively, “secondary evidence” was requested, being a combination of any three of: homeowner property insurance; BC vehicle registration and insurance; utility bills for six months in the reference year; correspondence with government authorities; and other billings such as internet or credit cards or mobile phone accounts, or banking statements.

- [11] As noted, some of this was provided at audit along with a written declaration of the female owner that the property was her principal residence, but it was found wanting. At the VTRO stage, despite her providing bank statements covering the seven month period, the original audit decision that the property was not a principal residence was upheld.
- [12] Seemingly central to both the audit and VTRO decisions was that the property insurance policy stipulated that the property was insured as a s.22(1)

ANALYSIS:

- [13] In accordance with the Vacancy Tax Review Adjudication process, the Panel has independently reviewed all the evidence submitted by both the City and the female owner. The Panel finds, on a balance of probabilities, that the Vancouver property does not qualify for an exemption under the relevant provision of the *Vacancy Tax By-law* for the following reasons.
- [14] Taxpayers seeking an exemption from tax have the burden of establishing the necessary facts to justify the exemption. The Panel's task is to ensure that the Vacancy Tax Review Officer (VTRO) correctly interpreted the By-Law in light of those facts. (see *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20).

PRINCIPAL RESIDENCE ANALYSIS:

- [15] The owner provided the following statements at the audit stage:

s.22(1)

Per Vacancy Tax bylaw: a married or common law couple can have two principal residences. s.22(1)

(Parenthetically the VTRO decision concedes this point, saying, "s.22(1)

s.22(1)

s.22(1)

For [the] insurance form, if the principal residence is not physically occupied under full year term, the policy is issued as s.22(1) special form: s.22(1) Form, Principal Residence" (see policy attached). My insurance policy clearly states that the premises insured is my principal residence.

[16] Following the VTRO decision, the female owner made a further submission through her legal counsel that can be summarized as follows.

[17] Under the By-Law a parcel of residential property is not taxable if it is occupied as a principal residence for more than six months in the vacancy reference period. The definition of "principal residence" under the By-Law as worded during the 2019 reference period was:

"principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence;

[18] The submission notes that this definition has three components:

- (a) The usual place where a person lives;
- (b) The usual place where an individual makes his or her home;
- (c) The usual place where an individual conducts his or her daily affairs, including without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes.

- [19] The submission suggests that there is no issue about where the female owner lives and the test for (a) is met, leaving (b) and (c) for analysis. The Panel does not agree. The test is not whether a person lives at the subject property. Instead it is whether the property is “usual place” where the person lives. In this case the female owner s.22(1) [REDACTED]
- [20] It is a rule of construing statutes, which includes by-laws, that:
- Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (see E. A. Driedger *The Construction of Statutes*, 1974, p. 67).
- [21] The purpose of this By-Law has been interpreted in past Panel decisions as being to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. For this reason, it is important to determine whether an owner lives in an audited Vancouver property as part of the analysis of whether it is vacant or under-utilized.
- [22] In the context of the By-Law the term “usual place where a person lives” is, in its ordinary sense, the place where the person usually resides; eating, sleeping, and going through life’s daily activities. The female owner by her own admission does not do so in the s.22(1) [REDACTED] On the evidence she does not meet this part of the definition test.
- [23] This leads to an issue of whether it is sufficient if she meets the other parts; in other words, if it is sufficient for the property to be her “home” and/or where she conducts her daily affairs. The owner’s submission seems to concede that the test is conjunctive and requires all three components, but the Panel will nevertheless analyze all branches of the test on the facts of this case.
- [24] The submission notes that the By-Law has no definition of the term “home” and so it references the *Oxford English Dictionary*, which defines “home” as:
- a. dwelling place; a person’s house or abode; the fixed residence of a family or household; the seat of domestic life and interests;
 - b. Without article or possessive. The place where one lives or was brought up, with reference to the feelings of belonging, comfort, etc., associated with it.

- [25] The submission, while acknowledging some overlap of the definition of “home” with the usual place where a person lives, suggests that when making an analysis of what is a “home” the consideration must be more qualitative. The submission references the second part of the definition and the s.22(1)
- [26] The difficulty with this part of the submission is that part (b) is not the operative part of the OED definition in the circumstances of this case. Instead, it is part (a) that speaks to a dwelling place. Part (b) applies where the word is used “without article or possessive”, as in “at home” or “home is far away”. Part (a) addresses where (using articles or possessives) a person has his or her “house or abode”; in other words where that person’s “fixed” or at least usual residence is located. In this sense, as the owner’s submission concedes, it is much like determining where the person principally lives.
- [27] In *Farina v. Grant Administrator*, 2006 BCSC 1093, the court dealt with a similar issue. A person who was seeking a home owner grant had two homes between which she divided her time about equally. The court on judicial review considered whether the Grant Administrator’s decision as to her claimed “eligible residence” for a grant was reasonable on the evidence. The Grant Administrator’s analysis was based on a test that the “[p]rinciple residence...is the place where an individual lives and conducts his/her daily affairs. Ownership of a home does not automatically qualify the taxpayer for a grant even if it is the only home the person owns...”
- [28] The court stated:
- [22] I turn then to whether there is a reviewable error in this case. The definition of “principal residence” in the statute is problematic. It requires a determination of “the usual place where an individual makes his or her home.” But for the use of the definite article, the definition is straightforward. If one were asked simply, “Where does the petitioner usually make her home?” the obvious answer would be Allison Lake in the summer and Burnaby in the winter. The definition, however, demands that one determine a single place that is the principal residence, not a multitude of places that may be the principal residence at different times of the year.

...

[25] The issue of what place is a usual home, it seems to me, is not a straightforward simple issue of law, but rather a mixed question of fact and law that must be assessed by considering the totality of the circumstances.

[29] As much as the female owner s.22(1) [REDACTED]
[REDACTED]
[REDACTED] it is not her home for the purposes of the By-law. It is not her fixed or even usual residence.

[30] This conclusion is amplified by review of the evidence provided with reference to the third part of the definition. Is the Vancouver property where the female owner usually conducts her daily affairs? Her counsel's submission is that, while the definition suggests that the principal residence may be the one used on documentation related to billing, identification, taxation, and insurance purposes, it is not required, and that persons s.22(1) [REDACTED]
[REDACTED] Billing addresses are but an instance of what may constitute evidence of conducting daily affairs.

[31] With this the Panel agrees. The definition is expansive, "including without limitation" paying bills and receiving mail with the address of a subject property. However, under that expansive definition the evidence in this case indicates that the majority of the daily affairs of the female owner, that is her day-to-day activities, are not conducted at the Vancouver property s.22(1) [REDACTED]
s.22(1) [REDACTED]

[32] For these reasons, and with an acknowledgement that this must be hard for the female owner s.22(1) [REDACTED]
s.22(1) [REDACTED], but instead, subject to specified exemptions, where the owner is.

[33] As noted the submission also addressed an alleged misinterpretation in the audit and VTRO decisions on the meaning of the term s.22(1) [REDACTED] " in the insurance policy,

stating it is clear the policy is a homeowner policy. Given the Panel findings on the facts it is not necessary to address this.

PROCEDURAL DEFECT ANALYSIS:

- [34] Finally, the female owner's legal counsel raises a procedural issue as to why tax cannot be levied in this case.
- [35] It is a submission based on the Latin-phrased principle of *delegatus non potest delegare*, meaning that an official to whom power has been delegated cannot further delegate that power.
- [36] The By-Law provides that tax can only be imposed by issuance of a "vacancy tax notice" or a "supplementary vacancy tax notice". In this case as the notice went out more than a year after the vacancy reference period of 2019 it was a supplementary vacancy tax notice. The By-Law definition of relevance is 1.2:
- "supplementary vacancy tax notice" means a notice issued to a registered owner of residential property where the Collector of Taxes has determined after the 10th business day of March of the current tax year, that a vacancy tax notice should have been issued for a parcel of residential property for either the current tax year or one or both of the two most recent tax years; (emphasis added)
- [37] In this case it is submitted that the supplementary notice was invalidly issued.
- [38] The argument is that under section 2.6 of the By-Law an amount stated on a supplementary notice is only due and payable on the date set out on that notice, and if no valid supplementary notice is issued then no tax is payable.
- [39] The owner submits that the Collector of Taxes has a key role to play in issuance of a supplementary notice, as set out in sections 4.12 and 4.14.

Determination of taxable property

4.12 The Collector of Taxes must review the property status declaration, and all information and evidence collected in regards to a parcel of residential property and must determine whether or not the parcel is taxable property that is subject to the vacancy tax, except that, in the case of a parcel of residential property deemed to be vacant under this by-law, the Collector of Taxes must consider the parcel to be vacant property and subject to the vacancy tax.

Supplementary vacancy tax notice

4.14 If the Collector of Taxes determines at any time after the 10th business day of March that a vacancy tax notice should have been issued for a parcel of residential property for either the current tax year or one or both of the two most recent tax years to which this by-law applies, the Collector of Taxes must cause a supplementary vacancy tax notice to be mailed to the registered owner of the taxable property for the applicable tax year or years. (emphases added)

- [40] The submission is that two conditions underly a valid notice; first it must arise from a determination of the Collector of Taxes of the empty homes tax (EHT) status of the property in the relevant period, and secondly the Collector of Taxes must cause the supplementary notice to be mailed to the owner.
- [41] While "Collector of Taxes" is not defined in the By-Law or the *Vancouver Charter*, where the term is also used, the appointment is made by City council to a specific employee from time to time, who counsel for the owner identifies by name for the year 2019. Nothing in any City bylaw or provincial legislation provides for the duties of the Collector of Taxes to be delegated. Counsel points out that City by-laws specifically provide for delegation of other officials' duties, such as those of the Vacancy Tax Review Officer (VTRO), and Chief Building Official. Counsel notes that amendments were made in 2022 to provide for delegation by the VTRO, and that federal statutes such as the *Excise Tax Act* specifically state that the Minister may authorize others to "exercise powers or perform duties of the Minister".
- [42] It is submitted that absent that express power to delegate, the Collector of Taxes must act personally for a supplementary vacancy tax notice to be validly issued. In this case that did not happen. Another City employee acting for the Collector of Taxes exercised those duties on delegation by the Collector of Taxes.
- [43] In *Penalta v. Ontario*, 1988 CanLII 28; [1988] SCR 105, the Supreme Court of Canada, upheld a decision of the Ontario Court of Appeal (1985 CanLII 3125) relevant to analysis of this submission.

[36] "There is no rule or presumption for or against subdelegation": Driedger, "Subordinate Legislation", 38 *Can. Bar Rev.* 1 (1960), at p. 22. The language of the statute must be interpreted in light of what the statute is seeking to achieve. As Professor Willis pointed out, the maxim *delegatus non potest delegare* "does not state a rule of law; it is 'at most a rule of construction and in applying it to a statute 'there, of

course, must be a consideration of the language of the whole enactment and of its purposes and objects": Willis, "Delegatus Non Potest Delegare", 21 *Can. Bar Rev.* 257 (1943), at p. 257.

- [44] More recently the court in *Re Therrien*, 2001 SCC 35 (CanLII), [2001] 2 SCR 3 stated:

93 It is settled law that a body to which a power is assigned under its enabling legislation must exercise that power itself and may not delegate it to one of its members or to a minority of those members without the express or implicit authority of the legislation, in accordance with the maxim hallowed by long use in the courts, *delegatus non potest delegare* ...

- [45] In *International Forest Products Limited v. HMTQ (BC)*, 2006 BCSC 233, the court stated:

[291] An argument put forward by the Crown is that the District Manager has been delegated only an administrative power. The parties agree that there is usually an implied authority to subdelegate administrative powers: ...

...

[294] It is not always easy to distinguish between legislative and administrative powers. In *Bari III*, [*BC Milk Marketing Board v. Aquilini*, [1997] B.C.J. No. 843 (S.C.)], Wong J. accepted the following definition from S.A. de Smith and J.M. Evans, *De Smith's Judicial Review of Administrative Action*, 4th ed. (London: Stevens & Sons, 1980) at p. 71:

A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act cannot be readily defined, but it includes the adoption of a policy, the making and issue of a specific direction, and the application of a general rule to a particular case in accordance with the requirements of policy or expediency [sic] or administrative practice.

- [46] In this case the delegation by the Collector of Taxes to another City employee to determine the EHT status of the property in the subject reference period, and to issue the supplementary tax notice, were clearly administrative and not legislative actions. Consequently, this particular delegation does not run afoul of the principle of *delegatus non potest delegare*. The supplementary tax notice was validly issued.

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FINAL DETERMINATION:

[47] My final determination is that Vacancy Tax should be imposed on the subject property.
The review is denied.



Panel: Michael F. Welsh, K. C.

Date: April 13, 2024

The City of Vancouver Vacancy Tax Review Panel Decision

Date: April 14, 2024

File Number: RC-2022-00068

Requestor: s.22(1)

Vacancy Reference Year: 2020

Civic Address: s.22(1)
s.22(1)

Folio: s.22(1)

OVERVIEW OF ISSUES:

- [1] The single issue for the Panel is to determine whether the owners have provided sufficient evidence that the subject property, which the Panel will call the s.22(1) property, was occupied as a principal residence by a permitted occupier during the 2020 vacancy reference period.

FACTS:

- [2] After the s.22(1) property was selected for audit, the owner s.22(1) advised that one of s.22(1) occupied the s.22(1) property in 2020 and had done so continuously since August 2015.
- [3] All dealings in this matter by City officials in the audit and at the VTRO stage were with s.22(1). The other registered owner, s.22(1) s.22(1) s.22(1) s.22(1) The evidence does not assist in a determination as to the exact nature of that owner.
- [4] s.22(1) advised that the s.22(1) property s.22(1) s.22(1) with the goal of creating a tenancy in common, s.22(1) s.22(1)
- [5] He further advised that s.22(1) s.22(1)

- [6] He said that he had asked s.22 to contact the City official dealing with the audit. He gave s.22(1) He said he understood that s.22(1) had called the official. When the official advised that s.22(1) had not done so, he responded that s.22(1), and would keep trying to reach him to contact the City official.
- [7] s.22(1) provided all the BC Hydro billings for the s.22(1) property for 2020, that cover a period of two years, namely 2019 and 2020, showing electricity usage over that period. The billings are all in the name of s.22(1) with the s.22(1) property as the service address.
- [8] When asked about the billings not being in s.22(1), "I understand that the BC Hydro doesn't show s.22(1) pay the BC Hydro bill? It was in the middle of Covid and s.22(1) s.22(1) "
- [9] The official conducting the audit replied that in order to support that the s.22(1) property was the principal residence of a permitted occupant in 2020, evidence in the name of the permitted occupant, mailed to the s.22(1) property in 2020, needed to be submitted. That could include a BC Driver's Licence, BC Services Card or BCID, CRA Notice of Assessment, other utility billings, credit card or bank statements, home insurance with the occupant as an additional insured, government correspondence and any other invoices such as grocery receipts, on-line shopping invoices, food delivery invoices, medical invoices, and paystubs.
- [10] A couple of extensions were given for provision of additional documents. None were provided and apparently s.22(1) never contacted the City official involved.

AUDIT AND VACANCY TAX REVIEW OFFICER (VRTO) DECISIONS:

- [11] Based on findings of inadequacy of the evidence provided, both the audit and the VTRO decisions were that occupancy had not been proven and the s.22(1) property was subject to the vacancy tax.

ANALYSIS:

- [12] In accordance with the Vacancy Tax Review Adjudication process, the Panel has independently reviewed all the evidence submitted by both the City and the owner. The Panel finds, on a balance of probabilities, that the Property does qualify as a principal residence of a permitted occupier and is not subject to vacancy tax under the relevant provision of the *Vacancy Tax By-law* for the following reasons.
- [13] Taxpayers seeking an exemption from tax have the burden of establishing the necessary facts to justify the exemption. The Panel's task is to ensure that the Vacancy Tax Review Officer (VTRO) correctly interpreted the By-Law in light of those facts. (see *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20).
- [14] In this case the only evidence is emailed statements of the owner s.22(1) as to the occupied status of the s.22(1) property and the BC Hydro billings. Those billings do show that electricity was used by someone at the s.22(1) property in a manner that is proportionate to expected usage during each of the months involved. In winter months the billings are highest, in spring and fall more moderate, and in summer low.
- [15] The billing amounts, each reflecting the month before the billing date, are:

s.22(1)



- [16] From these billings the conclusion most reasonably drawn, indeed the logical conclusion, is that someone was occupying the s.22(1) property in 2020, and that it was not vacant.

- [17] The registered owner stated that it was s.22(1) . Unfortunately, nothing was heard from s.22(1) and no documentation with s.22(1) and the s.22(1) property address was provided.
- [18] Under section 2.2 of the By-Law a property is considered unoccupied in the following circumstances:
- (a) the residential property is not the principal residence of an occupier; and
 - (b) the residential property is not occupied for residential purposes by an arm's length tenant under a tenancy agreement, or by an arm's length subtenant under a sublease agreement, for a term of at least 30 consecutive days.
- [19] The By-Law defines an "occupier" as "... a registered owner or a person who occupies residential property with the permission of the registered owner but is not a tenant or subtenant".
- [20] "Principal residence" is defined as:
- ... the usual place where an individual lives, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence ...
- [21] It is a rule of construing statutes, which includes by-laws, that:
- Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (see E. A. Driedger *The Construction of Statutes*, 1974, p. 67).
- [22] The purpose of this By-Law has been interpreted in past Panel decisions as being to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver.
- [23] While the BC Hydro billings show someone was using electricity in a way that supports the s.22(1) property being occupied throughout 2020, does the evidence that the owner

provided sufficiently meet the owner's onus of proof to establish, on a balance of probabilities, that the s.22(1) property was the principal residence of s.22(1)

- [24] In order to find so, the Panel would need to accept the statements of the owner, s.22(1) s.22(1) as to the identity of the occupant at face value. The Panel would also need to find that s.22(1) had the s.22(1) property as his principal residence.
- [25] Generally, the Collector of Taxes (who administers the By-Law) and City officials who conduct audits on behalf of that office, seek documentary evidence to support claims for principal residence occupation or for the listed exemptions under the By-Law. Section 4.9 addresses that evidence, saying that "[t]he information or evidence required by the Collector of Taxes pursuant to this by-law may include but is not limited to ..." followed by a list that includes the requested documents in this case noted earlier, along with "statutory declarations or affidavits regarding the status of the property", and other documents related to exemptions that are not relevant here. Important in this section are the words "including but not limited to".
- [26] The Panel is not bound by the same rules of evidence as a court. The By-Law places no restriction on what evidence the Panel can consider, only providing that there is no oral hearing and submissions and the decision are solely in writing. Section 6.15 of the By-Law states the Panel is to "consider the review request based on the materials provided pursuant to section 6.13 and, without a hearing, make a determination on the review". Section 6.13 states what the owner must submit in a review request, which in addition to identifying the property and requester or any agent of the requester, is to "state the grounds on which the review request is based". Nothing is said about evidence.
- [27] Often in these Panel reviews, the explanatory evidence comes in the form of unsworn statements, emails, and letters from the owner or a lawyer on the owner's behalf, rather than a statutory declaration or affidavit. The Panel assesses that unsworn evidence, as it does with all evidence, to determine whether to accept it, and as its relevance and cogency.
- [28] In assessing the totality of the evidence here, the Panel has documentary proof of occupation of the s.22(1) property by someone throughout 2020. It has the written statements of the individual owner that was s.22(1) It also has his statement that s.22(1) was there during the time when the covid outbreak hit BC.

- [29] The Covid-19 pandemic and the lockdowns that occurred in BC, along with the rest of Canada and the world, are of such general knowledge that the Panel has no hesitation in recognizing this as evidence, just as a court can take judicial notice of such well-known and uncontroversial facts. The test, set out in many cases, including *R. v. Find*, 2001 SCC 32 at para 48:

Judicial notice dispenses with the need for proof of facts that are clearly uncontroversial or beyond reasonable dispute. Facts judicially noticed are not proved by evidence under oath. Nor are they tested by cross-examination. Therefore, the threshold for judicial notice is strict: a court may properly take judicial notice of facts that are either: (1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy . . .

- [30] During much of the time from the early spring of 2020 most people stayed in one residential location and were heavily restricted as to where they could go. Many businesses were closed, others switched to having employees work from home, restaurants closed or did take away service only, bars, clubs, gyms, schools and even places of worship were closed, and BC residents were urged not to travel and to maintain a close “bubble” of those they associated with in person. It was a time of Zoom and Skype contact.
- [31] Consequently, it is the most logical conclusion that the occupant of the s.22(1) property during that period where most people confined themselves to home was s.22(1) and not someone else outside the immediate s.22(1)
- [32] In reaching this conclusion, the Panel applies the test set out by our Court of Appeal in *Faryna v. Chorny*, 1951 CanLII 252, [1952] 2 DLR 354 (BCCA), said at para. 11, “[i]n short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions”.
- [33] Despite the paucity of documentary evidence identifying the occupant, the facts of how we all responded to the covid lockdown, and the statements of s.22(1) as a s.22(1), and in somewhat rhetorically asking s.22(1) property was not occupied by s.22(1) s.22(1) They accord with the principles set out in *Faryna*.

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[34] The Panel finds on a balance of probabilities that s.22(1) occupied the s.22(1) property throughout 2020 as his principal residence.

FINAL DETERMINATION:

[35] The Panel's final determination is that Vacancy Tax should not be imposed on the subject property. The review is allowed and the vacancy tax notice is rescinded.


Panel: Michael F. Welsh, K. C.

Date: April 14, 2024

**The City of Vancouver Vacancy
Tax Review Panel Decision**

Date: April 16, 2024

File Number: RC-2023-00001

Requestor: s.22(1)
(the "Owner")

Vacancy Reference Year: 2020

Folio: s.22(1)

Civic Address: s.22(1)
(the "Property")

Introduction

At the request of the Owner, The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with the Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Owner's Declaration of the Property for the 2020 Vacancy Reference Year

The Owner filed a declaration that claimed that the Property was exempt from the Vacancy Tax for the 2020 Vacancy Reference Year on grounds that it was occupied by a permitted occupant who had the Property as their principal residence.

For the previous two years, the Owner's declarations had shown the Owner to have occupied the Property as his principal residence.

Notice of Audit

By a letter dated January 12, 2022, the Owner was advised by the City of Vancouver Vacancy Tax Office that the declaration provided by the Owner would be audited. The Owner was invited to respond to an online questionnaire and submit such additional information as appropriate by February 15, 2022. The Owner filled in the questionnaire. He identified s.22(1) as the permitted occupant who had the Property as her principal residence in 2020. s.22(1) is said in some of the evidence to be the Owner's s.22(1).

By a letter dated January 19, 2022, the Owner was advised by the Auditor that further information and documentation was required in order to support the Owner's declaration that the Property was occupied during 2020 by s.22(1) as an occupant permitted by the Owner. The Owner was specifically directed to submit the correct form for the nature of occupation by s.22(1) provide a copy of the ICBC residential address history and three sets of supporting documents for s.22(1). Examples of the supporting documents as drawn from the Bylaw's sections 4.7, 4.8 and 4.9 were given, including:

- 2020 Occupant's Insurance Policy (ensuring the policy covers 6 months or more in 2020)
- 2020 ICBC vehicle registration and insurance (ensuring the policy covers 6 months or more in 2020)
- 2019 CRA T-Slips (T4/T5/T3)

- 2019 CRA Notice of Assessment, issued in 2020
- Utility Bills for 6 months in 2020 from ONE supplier (BC HYDRO and FORTIS BC)
- Any 2020 dated correspondence from a government authority (e.g. Canada Child Benefit, Canada Pension Plan (CPP), Old Age Security or Guaranteed Income Supplement (OAS/GIS), Employment Insurance (EI).
- 6 months of bank and/or credit card statements (name/address/statement date must be shown, financial information can be redacted).
- Internet/cable bills spanning 6 months in 2020.
- Cellphone bills spanning 6 months in 2020.

The letter instructed the Owner that: "Documents should display the permitted occupant's name, appropriate address, and should have been issued between January 1, 2020 and December 31, 2020." The purpose of the bylaw specifying these sorts of documents and of the Auditor requesting them is that they typically should be available to a person who is genuinely occupying a property as their principal residence.

The deadline for submission was set at February 15, 2022. The Owner submitted materials in response to the request. The Auditor reviewed those materials.

Auditor's Pre-determination Letter to the Owner

By a pre-determination letter dated February 9, 2022, the Auditor wrote the Owner and explained that:

This property was declared as the principal residence of a permitted occupant. For the purposes of the Vacancy Tax bylaw, an individual can have only one principal residence and, if they have more than one, they cannot designate which one is their principal residence. According to the bylaw, a "principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills.

The owner or permitted occupant is not required to occupy the property for any period of time, as long as the property **is** their principal residence. A second home that is used occasionally or intermittently by the registered owner or his/her guests (i.e. it is not a principal residence), and is not occupied by a tenant or subtenant for at least six months of the year (in periods of 30 or more consecutive days), is considered vacant and subject to the vacancy tax, unless a specific exemption applies.

The Auditor then explained the results of the review the materials submitted by the Owner, as follows:

- s.22(1) card showed s.22(1) principal residence in 2020 as s.22(1)
- BC Hydro invoice dated December 1, 2021 – the invoice was not in the permitted occupant's name and dated outside the 2020 vacancy reference period (January 1, 2020 to December 31, 2020).
- s.22(1) – the evidence did not have an address to validate the 2020 declaration.
- 2020 CRA notice of assessment – the evidence was issued outside the 2020 vacancy reference period and sent to s.22(1)
- s.22(1) the evidence was stamped January 25, 2022 and only shows the current address at the time of printing.
- 2020 CRA T5007 and T4A (OAS) tax slips – the evidences were issued February 2021, outside the 2020 vacancy reference period.

The Panel has reviewed the same materials and finds that the Auditor's evaluation of the evidence presented is accurate.

The Auditor advised the Owner in the February 9, 2022 letter that "Based on the evidence provided to date, we do not consider that this property was the principal residence of a permitted occupant for at least six months in 2020." The Owner was afforded a further opportunity to come up with "additional information that you can provide to show that your property is exempt under the Vacancy Tax Bylaw." A deadline of February 21, 2022 was set for submitting anything further.

Owner's Response to Pre-determination Letter

The Owner sent the Auditor a letter in response. The key points in it and the Panel's findings (in brackets) are as follows:

- (a) The Owner argued first that the electricity bill showed that power was being consumed at the Property in 2020 and concluded that "some one was there" and "the home was not empty."

[That, of course, does not establish that s.22(1) was there and that the Property was her principal residence, which was the basis in the declaration for the claim of exemption.]

- (b) The Owner complained that it was not up to him to have the occupant change their address information on the kinds of documents requested. He explained that he understood that s.22(1)

s.22(1)

[Assuming that to be so, it would have been preferable for that evidence to come from s.22(1)

s.22(1)

s.22(1)

But regardless of those points, the reason for supporting documents being listed and requested was to prompt the Owner to produce evidence supporting the principal residence by a permitted occupant exemption that was claimed. If the documents sought did not do so (as the Owner appears to concede), then the Owner knew that he had to come up with something else that would establish it.]

- (c) The Owner refers as well to the Form K that was submitted to the Strata Corporation and identified s.22(1) as occupying the Property. The Owner concludes saying that s.22(1)."

[Difficulties exist with this argument, however, as the Form K is dated May 10, 2020 and describes s.22(1). Further, s.22(1) s.22(1) is dated October 9, 2019 and describes s.22(1) of the Property. Residential tenancy is not the basis stated for exemption in the Owner's declaration. Also, the s.22(1) s.22(1)

The Owner appears also to have come up with additional utility bills (e.g., BC Hydro) that are dated within 2020, but they are addressed not to s.22(1) at the Property's address.

Auditor's Determination Letter

By a letter dated March 15, 2022, the Auditor advised the Owner that:

Based on the information and documents you submitted, we have determined that your property status declaration is non-compliant and your property is subject to the Vacancy Tax.

The reason(s) for our non-compliant conclusion are as follows:

·Inappropriate Evidence

Based on the evidence provided, the City determines that this property was not the principal residence of an occupier in 2020, and is considered vacant per Section 2 of the Vacancy Tax By-Law (No.11674).

Owner's Notice of Complaint and Request for Review by Vacancy Tax Review Officer

The Owner was not satisfied with that determination. By way of a letter dated May 19, 2022 from s.22(1) retained by the Owner, a Notice of Complaint was delivered requesting that the matter be reviewed by a Vacancy Tax Review Officer. s.22(1) states that:

"It is our position that the property was the principal residence of s.22(1) in 2020, and therefore s.22(1) should be exempt from paying the vacancy tax."

That position re-confirmed that the basis for the exemption claim was principal residency by a permitted occupant.

s.22(1) then set out that, concerning the BC Hydro bills proffered as supporting documents, "The bills were paid for by s.22(1) and the account was registered under s.22(1)." He attached "NOVUS internet and cable bills" that were similarly addressed to s.22(1), were for the period from May through December 2020 and were said to be for such services to the Property. s.22(1) added that s.22(1) chose not to update the address on her personal identification card, and she chose to keep s.22(1)

He also argued that the Form K was really a Strata Corporation form, even though it had been hand filled in by the Owner and signed by s.22(1) and had no confirmation from the Strata Corporation that it got it, much less than confirming a tenancy.

The Review Officer reviewed the letter from the Owner's lawyer along with the materials previously submitted to the Auditor and requested the Owner supply any further materials that the Owner thought relevant.

Review Officer's Pre-determination Letter to Owner

By a pre-determination letter dated September 13, 2022, the Review Officer wrote to the Owner and s.22(1) and advised as follows:

We have reviewed the evidence provided to date to support the property was the principal residence of the permitted occupant for at least six months of 2020, and do not consider it to be sufficient.

We generally require at least 1 primary document (BCDL, BC Services Card, BCID, CRA Notice of Assessment), and 3 secondary documents (utility bills, bank statements, government correspondence, etc.) issued to the permitted occupant s.22(1) at the property's mailing address of s.22(1)

The only documents provided to date that include the permitted occupant's name and the property address are the Strata Form K and the s.22(1) both of which are self-completed documents and are not issued by a third party.

While it may be reasonable that the occupant's s.22(1) assisted with the documents for the unit, we note the following inconsistencies and risks:

- The property has not been declared as tenanted; however, the s.22(1) form indicates that the occupant was renting the property s.22(1)

- The period of occupancy has been stated to be May 1, 2020 to December 31, 2020, which is inconsistent with the s.22(1) form being completed on October 9, 2019.
- On July 7, 2020, the City issued a s.22(1) s.22(1) s.22(1) stating that the property continued to be in non-compliance with the City's Licence By-laws as the property continued to be marketed as a short-term rental accommodation on Airbnb.ca without a business license.
- On September 15, 2020, the City issued an Order to the owner, s.22(1) to cease permitting the unauthorized use of the premises at s.22(1) for short term rental accommodation within 10 days of the date of the order.

Based on the evidence received to date, and the short-term rental case files, we do not consider that the property was the principal residence of a permitted occupant for at least six months of 2020.

The Review Officer invited the Owner to supply any further information or documents in support of an exemption claim and gave a deadline of September 28, 2022.

Owner's Response to Review Officer's Pre-determination Letter

One item that was provided on behalf of the Owner that is notable here is the Form A that s.22(1) s.22(1) filled out and signed. In it, he says that he was the tenant of the Property from May 1, 2020 to December 31, 2020. That, of course, does not gibe with the previous information provided to the Auditor that the reason the documents submitted for s.22(1) had another address was that that other address was s.22(1) address and he was handling things for her. It is also inconsistent with s.22(1) s.22(1) letter stating that s.22(1) address was elsewhere and that was why s.22(1) supporting documents showed that other address and not the Property's. If the Property were s.22(1), s.22(1)'s address as well, then that would not be so. No explanation for the discrepancies was provided.

Also, the initial declaration was that s.22(1) was a permitted occupant who made the Property her principal residence. There was no claim for exemption from the Owner asserting a residential tenancy by her or by s.22(1). This point is notable given that the definition of "permitted occupant" having a "principal residence" in the Vacancy Tax Bylaw excludes tenancy situations.

A permitted occupier, under the terms of section 1.2 of the Vacancy Tax Bylaw is an "occupier" defined thus:

"occupier" means a registered owner or a person who occupies residential property with the permission of the registered owner but is not a tenant or subtenant;

(emphasis added)

There is a separate Bylaw provision for a claim for exemption based upon property being leased out to a tenant or sub-tenant. That was not what the Owner here set out in his declaration.

For the exemption to apply, the permitted occupier must make the Property their “principal residence.” The Bylaw defines a “principal residence” as follows:

“principal residence” means the usual place where an individual lives, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver’s licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence;

In passing, the Panel notes that Bylaw 13749, enacted on February 8, 2022, altered the version of this definition that was in place in 2020 so that instead of saying “his or her home and conducts his or her daily affairs”, the “his or her” was changed to “their”. Nothing turns on that change for purposes of this decision.

The Owner wrote the Review Officer a letter (undated) that repeats the points made in the Owner’s previous letter to the Auditor. With regard to the AirBnB issue, the Owner stated this:

Although s.22(1) applied for permission to list the property on Airbnb, he immediately sent another letter stating that the application was a mistake. The letter is attached. This unit was never rented on Airbnb nor was it used for short rental purposes on Airbnb or anywhere else.

The email from s.22(1) has the “letter” to which the Owner refers. It is dated September 14, 2022. In it, s.22(1) starts off his account of events with an unfortunate phrase – “The story is...” What follows that opening is riddled with inconsistencies and implausible suggestions:

The story is that I had opened an Airbnb file and I also registered a license under the property s.22(1). My primary purpose was never to list s.22(1) property.

In fact, I used that license for another property by mistake as I had no experience with Airbnb and city licensing. I registered a license under my primary Residential address which was s.22(1) and used that license by mistake for my another own property(as you can see on their attached files pictures).

City of Vancouver then approach me by this email and right away after I find out about my mistake, I close the account as they also confirmed that on this attached email.

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I never listed the property s.22(1) on Airbnb. Even if I had listed this property, I had registered the property and had proper Licensing regarding that. On the other hand, This matter is Vacancy Tax and based on their recent reply, someone has been living their at all time and I don't understand the connection between Airbnb and Vacancy Tax matter.

Understandably, the Review Officer did not regard the Owner's response with the explanation from s.22(1) as satisfactory.

The Review Officer investigated matters relating to the AirBnB issue and contacted s.22(1) directly. The Review Officer's notes and findings on this are as follows:

- s.22(1) is a s.22(1). He is also the licence holder of s.22(1) full name may be s.22(1) s.22(1) as per information we received about their involvement in the s.22(1) s.22(1) Note that complainant also confirmed s.22(1)


- Spoke with s.22(1) via 311... s.22(3)(d)

- Three minutes after the call ended and s.22(3)(d)

For 2021, the property has been declared as Permitted Occupant s.22(1) and for 2022 as tenanted s.22(1)

s.22(3)(d)

s.22(3)(d)



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s.22(3)(d)

s.22(3)(d)

s.22(3)(d)

s.22(3)(d)

s.22(3)(d)

Review Officer's Determination Letter to Owner

By a letter dated February 15, 2023, the Review Officer wrote to the Owner and set out the determination of the review:

Based upon a review of your submitted information and evidence to support your complaint, the Vacancy Tax Review Officer has determined that your property remains subject to the Vacancy Tax.

The reasons for the determination are as follows:

The Vacancy Tax Review Officer considers that the evidence provided was not sufficient to determine that this property was the principal residence of an occupier for at least six months in the vacancy reference period, and is considered vacant under Section 2 of the Vacancy Tax By-Law.

A “principal residence” means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver’s licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence.

The Vacancy Tax Review Officer considers that the evidence provided was not sufficient to determine that the property was occupied for residential purposes by an arm's length tenant under a tenancy agreement, for a term of at least 30 consecutive days, for at least six months in the vacancy reference period, and is considered vacant under Section 2 the Vacancy Tax By-Law.

Thus, the Review Officer rejected both the principal residence by a permitted occupier claim for exemption made in the Owner’s original declaration and the tenancy claim for exemption that the Owner developed through the audit and review process.

In the Panel’s view, the Review Officer came to the correct determinations on both grounds asserted for an exemption.

Legal Standards for Interpreting the Bylaw Provisions

In interpreting these bylaw provisions, the law has developed certain principles. Thus, in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, Iacobucci, J., for the Supreme Court of Canada, quoted at length from texts and prior case law but came to rest on this principle:

26 In Elmer Driedger’s definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

He went on to note that “in the federal legislative context, this Court’s preferred approach is buttressed by s. 12 of the *Interpretation Act*, R.S.C. 1985, c. 1-21, which provides that every

enactment “is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects”.”

With regard to the Vacancy Tax Bylaw, the *BC Interpretation Act* applies to assist in interpretation. It has a parallel provision to the federal one in section 8: “Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”

Where there is ambiguity courts can and do look beyond the text of the words in a statute. The aim is to determine which is the appropriate meaning to give the words. But, as Iacobucci, J., states at para. 29, in order to apply principles for resolving ambiguity, there must be an ambiguity to start off with:

- 29 What, then, in law is an ambiguity? To answer, an ambiguity must be “real” (*Marcotte, supra*, at p. 115). The words of the provision must be “reasonably capable of more than one meaning” (*Westminster Bank Ltd. v. Zang*, [1966] A.C. 182 (H.L.), at p. 222, *per* Lord Reid). By necessity, however, one must consider the “entire context” of a provision before one can determine if it is reasonably capable of multiple interpretations. In this regard, Major J.’s statement in *Canadian Oxy Chemicals Ltd. v. Canada (Attorney General)*, 1999 CanLII 680 (SCC), [1999] 1 S.C.R. 743, at para. 14, is apposite: “It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids” (emphasis added), to which I would add, “including other principles of interpretation”.

The Owner Has the Burden of Proof to Establish Facts Supporting Exemption Claims

In the present context, the Panel is dealing with a taxing provision in a bylaw. The law used to be that such provisions were construed strictly against the taxing authority when they involve the imposition of a tax. See, for example, the comments by Estey, J., in *Stuart* at p. 577 about that part of legal history: “any ambiguities in the charging provisions of a tax statute were to be resolved in favour of the taxpayer; the taxing statute was classified as a penal statute.” But equally so, with claims for exemptions, taxpayers were accorded no favors:

“Where the taxpayer sought to rely on a specific exemption or deduction provided in the statute, the strict rule required that the taxpayer’s claim fall clearly within the exempting provision, and any doubt would there be resolved in favour of the Crown. See *Lumbers v. Minister of National Revenue* (1943), 2 DTC 631 (Ex.Ct.), affirmed 1944 CanLII 52 (SCC), [1944] S.C.R. 167; and *W.A. Sheaffer Pen Co. v. Minister of National Revenue*, 1953 CanLII 758 (CA EXC), [1953] Ex. C.R. 251. Indeed, the introduction of exemptions and allowances was the beginning of the end of the reign of the strict rule.”

In the result in the *Stuart* case, the Supreme Court rejected the “literal” approach to construing tax statutes and shifted interpretation somewhat so as to allow for a somewhat more liberal approach. That approach involved looking at the words in question in the total context of the taxing statute. The purpose of doing so was to ensure that the objective and spirit of the statute were applied.

In the recent case of *Deans Knight Income Corp. v. Canada*, 2023 SCC 16, however, the Supreme Court noted that what remained was a general principle drawn from a decision of the House of Lords:

[46] In *Commissioners of Inland Revenue v. Duke of Westminster*, [1936] A.C. 1 (H.L.), Lord Tomlin recognized the foundational principle that “[e]very man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be” (p. 19). The principle that taxpayers can order their affairs to minimize the amount of tax payable has been affirmed by this Court on numerous occasions (see, e.g., *Stubart*, at p. 552; *Trustco*, at para. 11; *Copthorne*, at para. 65).

Further, the law provides that a taxpayer seeking an exemption from tax is usually deemed to have the burden of proving factual matters required to establish the exemption. Of course, that applies to factual matters and not to interpretation of the law. There is no burden on any party with respect to interpreting the law. That is the role of the adjudicator.

The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.*, 2006 SCC 20. At para. 26, the court noted that “The fundamental rules on the allocation of evidentiary burden in this matter remain valid.... The taxpayer bears the burden of displacing the Minister’s factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law. At para. 29, the court added that: “the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it — the duty to ascertain the correct interpretation lies with the court.”

The Principal Residence of a Permitted Occupier Issue

The Owner failed to establish by sufficient adequate, reliable and credible evidence his claim for exemption based upon the allegation that s.22(1) was a permitted occupier who held the Property as her principal residence. The Panel has noted the reasons set out by the Auditor and the Review Officer in their deliberations and determination letters. The Panel’s reasons for rejecting this claim for exemption include the following:

- (a) The Owner made the original declaration and then in the questionnaire identified s.22(1) as the “permitted occupier.” That turned out to be false. The Owner failed to prove that she made it her principal residence. Further, the Owner’s shift to describe her as a tenant would, if it were established, take her outside the definition of “occupier” and make this basis for exemption inapplicable.
- (b) The documents provided by the Owner failed to support his declaration. Instead, they showed s.22(1) having a different address than that of the Property or were outside the 2020 Vacancy Reference Year. The explanation that s.22(1), receive and deal with her mail at his other address fell apart when s.22(1) asserted that he was a tenant of the Property as well and when multiple addresses used by them appeared to exist.

- (c) The Owner failed to provide documents requested under the Bylaw and offered unconvincing explanations why they were not provided. The point of spelling out in the Bylaw certain categories of documents and then requesting them was to elicit things that usually would be available as support if a genuine permitted occupier of the Property on a principal residency basis existed. Where such materials do not exist or are not provided, establishing the exemption is a steeper hill to climb.
- (d) During the course of the Auditor's and the Review Officer's review, the Owner's position kept changing. It started with s.22(1) being a "permitted occupier" (which excludes tenants under the Bylaw definition), but the Owner shifted to characterizing her as a tenant. Vacillating and inconsistent positions are hardly the trademark of credible and reliable evidence.
- (e) The tenancy lacked documentary support, if it existed at all. There was no residential tenancy agreement, no firm dates for when it started, who the tenant or tenants were, what term the tenancy was for, what the rent was, whether, how and when it was paid and other significant factors that a tenancy agreement would ordinarily include. The absence of details that one would ordinarily expect makes the claim incredible and unreliable.
- (f) Further, the Owner's position shifted further when s.22(1) involvement was described. First, he was someone who lived elsewhere and took care of s.22(1) and other dealings from his own place. Later, he was described as the tenant of the Property and documents with his name and the Property's address on them were argued to support finding he was a tenant there. These inconsistencies undermine the claim for exemption.
- (g) Further still, the Owner and s.22(1) acknowledged to the Review Officer when pressed that s.22(1) had advertised the Property for short-term accommodation by others as an AirBnB. Having short-term rentals of the Property on an ongoing basis would not fit with its use as either a principal residency by a permitted occupant or a tenancy for 30 days or more taking up 6 months or more of the vacancy reference year.
- (h) When asked to explain the AirBnB issue, the Owner and s.22(1) gave inconsistent explanations, including suggesting that the words used in the advertisement spelling out that the Property was the location being offered for use as an AirBnB was a mistake and that it was another property that was really intended. s.22(1) described matters as a "story" that he was telling.

All evidence must be subjected to appropriate scrutiny. O'Halloran, J.A., in the oft-cited B.C. Court of Appeal decision in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, explains how an evaluation of the credibility of evidence given by interested parties should be made:

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

Winteringham, J., referred to that passage in her decision in *Latif v Nair*, 2024 BCSC 398 at para. 51. There, she dealt with a case where one party alleged an agreement to sell property at a certain price, but the other denied there was certainty about the terms. She noted the plaintiff bore the burden of proof. She reviewed different components of the claim and the evidence. At para. 130, she commented that, “First, and despite the plaintiffs’ position throughout the proceedings that the parties agreed on price, property and parties, I am not so convinced.” After reviewing inconsistencies and oddities about the evidence, she concluded that the plaintiff had failed to prove agreement as to the price.

Next, at para. 148, she says “The plaintiffs have not sufficiently demonstrated that a *consensus ad idem* was reached amongst the parties.” She addressed whether the payment of money said to be a deposit allayed concerns whether there was a contract, but found they did not. Payments did not cure the underlying flaws in the plaintiff’s case about whether there was a contract or not. At para. 150, she finds that “the plaintiffs’ payment of the deposits to him did not resolve any uncertainties in respect of terms of the transaction. To this extent, this case is similar to others where the payment of the deposits did not resolve uncertainties in contractual relations.”

The Supreme Court of Canada recently reiterated in *R. v. Kruk*, 2024 SCC 7 that evaluating credibility and reliability is grounded in common sense:

- “It is widely recognized that testimonial assessment *requires* triers of fact to rely on common-sense assumptions about the evidence.” (para 72);
- “...common-sense assumptions necessarily underlie *all* credibility and reliability assessments. Credibility can only be assessed against a general understanding of “the way things can and do happen”; it is by applying common sense and generalizing based on their accumulated knowledge about human behaviour that trial judges assess whether a narrative is plausible or “inherently improbable” (para. 73);
- “Common sense underpins well-established principles guiding credibility assessment — including the now-universal idea that witnesses who are inconsistent are less likely to be telling the truth — and assists in assessing the scope and impact of particular inconsistencies. Reliability also requires reference to common-sense assumptions about how witnesses perceive, remember, and relay information, invoking generalizations about how individuals tend to present information that they are remembering accurately and completely, as opposed to matters about which they are unsure or mistaken. A trial judge may, for example, infer that a witness was credible yet unreliable because they appeared sincere but displayed indicia that tend to suggest an unclear or uncertain memory (e.g., equivocation, phrases such as “hmm . . . let me see”, long pauses, or failure to provide much detail). (para. 74).

Finally, in their footnote 4, the court set out factors on which credibility and reliability determinations are properly made:

Credibility assessments engage factors such as: the internal consistency and coherence of the witness's testimony and the incidence of inconsistencies with prior statements, especially those made under oath; consistency with other accepted facts and probable circumstances; the plausibility of the narrative presented by the testimony; evidence of a motive to fabricate; and demeanour, though courts should not rely exclusively on this consideration and should be conservative in according it weight Reliability assessments engage factors such as: the conditions under which the witness made the material observations; the level of detail in their testimony; the amount of time that elapsed between the observations and the testimony; and whether any intervening factors may have tainted the witness's memory, discussing reliability in relation to eyewitness identifications).

Some of those considerations are inapplicable here (e.g., this was not a trial with witness testimony given in person where a direct evaluation of demeanour and the manner and delivery of spoken evidence can be made), but many are and reflect the importance of carefully reviewing the evidence in context and as a whole.

After having regard to those comments and to the evidence presented here, the Panel finds that there is insufficient evidence to support the claim for an exemption based upon s.22(1) being a supposed permitted occupier using the Property as her principal residence in the 2020 Vacancy Reference Period.

The Tenancy Issue

Next, there is the tenancy issue raised in the course of the audit and review by the Owner. It fails as well for the following reasons. The approach to reviewing evidence and interpreting Bylaw provisions noted above applies here with equal force.

Section 6.13 of the Bylaw sets out what an owner must include in a request review involving this Panel:

6.13 The review request must:

- (a) identify the residential property in respect of which the request is made;
- (b) include the full name of the requestor and a telephone number or email address at which the requestor may be contacted during regular business hours;
- (c) indicate whether the requestor is the registered owner of the property to which the request relates;
- (d) if the requestor is an agent acting on behalf of the registered owner, include information regarding the nature of their terms of agency and authority to act on behalf of the registered owner; and
- (e) state the grounds on which the review request is based.

(emphasis added)

The Owner does not appear to have invoked as "grounds on which the review request is based" the notion that a valid tenancy within the definitions set out in the Bylaw afforded a basis for exemption. If

that is so, then a determination of the tenancy issue is not required. If it is not so, however, then the tenancy issued must be determined. The Review Officer did that and, as noted, the determination that there was insufficient evidence of a qualifying tenancy was the correct conclusion.

For clarity, it is worthwhile setting out what the Vacancy Tax Bylaw says about establishing a claim for an exemption based on property being leased to a tenant. First, section 1.2 provides that:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Next, section 2.2 provides as follows:

2.2 Residential property is considered to be unoccupied in the following circumstances:

- (a) the residential property is not the principal residence of an occupier; and
- (b) the residential property is not occupied for residential purposes by an arm’s length tenant under a tenancy agreement, or by an arm’s length subtenant under a sublease agreement, for a term of at least 30 consecutive days.

Bylaw 2.3 provides:

2.3 Residential property is considered to be vacant property if:

- (a) it has been unoccupied for more than six months during the vacancy reference period;
- or
- (b) it is deemed to be vacant property in accordance with this by-law.

To have a tenanted property qualify for an exemption, there first has to be a genuine bona fide tenancy agreement “between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities” and that may include “a licence to occupy a rental unit.” That tenancy must involve occupying property “for residential purposes ... under a tenancy agreement ... for a term of at least 30 consecutive days.” Further, the property must be occupied for at least 6 months in the vacancy reference year.

Neither the Owner, s.22(1), nor s.22(1) provided a copy of a residential tenancy agreement. While it is possible (as noted in the definition above) that oral agreements may suffice, one would expect that if that were the case, the parties to such agreements could and would set out what the terms were. Here, it was unclear whether the alleged tenancy was made by the Owner with s.22(1) or with s.22(1) or perhaps with both of them. It was unclear when it commenced, what term it had, what rent was to be paid, whether it was paid and how, what evidence there was for that, whether a Form K was provided to the Strata Corporation of a tenant taking up possession for residential purposes and agreeing to abide by the strata bylaws and so on.

The Review Officer found that there was insufficient evidence to support any of the Owner's claimed bases for exemption, whether principal residency or tenancy. The Panel agrees with that determination.

The Bylaw's Deeming Provisions

The Panel also notes that sections 2.3(b) and 7.1 of the Vacancy Tax Bylaw may also support a determination that the Property was vacant. They set out deeming provisions in certain situations. Section 2.3(b) is quoted above and says that property "is considered" vacant if deemed vacant under the Bylaw. Section 7.1 is a deeming provision and set out the following:

7.1 A parcel of residential property in respect of which a registered owner:

- (a) fails to make a property status declaration as required by this by-law;
- (b) makes a false property status declaration;
- (c) fails to provide information or to submit required evidence to the Collector of Taxes in accordance with this by-law, including, without limitation, the information or evidence that may be required pursuant to Sections 4.7, 4.8 or 4.9 of this by-law; or
- (d) provides false information or submits false evidence to the Collector of Taxes;

is considered to be vacant property and is subject to the vacancy tax.

Those line up with sections 5.3 (owner must not make a false declaration and must not fail to correct a false declaration) and 5.4 (owner must provide information and documents when requested by Collector of Taxes or Vacancy Tax Review Officer and "must not provide false information or submit false evidence to the Collector of Taxes or vacancy tax review officer").

Section 7.1 is clearly a regulatory provision and is distinct from the offence provisions of the Bylaw. It deals solely with deeming property to be vacant property and subject to tax in the instances spelled out.

Section 8 provides for offences. The question whether an offence described in section 8 requires proof that a violation of the Bylaw was done knowingly (i.e., with what the law calls "*mens rea*") is beyond the scope of this review. But whether a deeming provision such as section 7.1 requires it is not.

In the Panel's view, the deeming provision does not require proof that a registered owner knowingly did one or another of the listed items in that section. The consequence to the owner if section 7.1 is applied is that the property "is considered to be" vacant and subject to tax. That is not punishment, but is rather a regulatory consequence under section 2.3(b).

It is sufficient that the facts show that, for example, the owner failed to make an annual declaration as required by the Bylaw, failed to provide information or required evidence in accordance with a request made pursuant to the Bylaw, or that a false declaration or false information or evidence were given. Also, there is no parallel in the language used in section 7.1 of the Bylaw to provisions seen in the statutes prescribing offences that a declaration, statement or evidence has to be made "knowing it to be false" to establish that an offence has occurred.

The Owner's position in his original declaration and in s.22(1) letter was that the exemption here was based on the principal residence by a permitted occupier provisions of the Bylaw. But during the course of the audit and review process, the Owner shifted to describe s.22(1) as a tenant, then to say that s.22(1) was a tenant, of the Property for more than 6 months in 2020. That acknowledgment, if true, means that the original declaration was false. That is so, at the least, because the Bylaw definition of "occupier" excludes tenants.

Further, the assertions made over time by the Owner concerning who the tenant was s.22(1) s.22(1) or perhaps both) were inconsistent, meaning that at least one or another of them was false.

The same holds for the assertions made concerning the reason why s.22(1) documents had a different address and/or s.22(1) at a different address. The explanation offered was that the other address was s.22(1) address and that he received s.22(1) from there. Later, s.22(1) was described as the tenant of the Property. Some bills sent to him at that address were put forward as supposed support for that. Again, at least one or another aspect of these shifting position was false.


Next, there are the indications that the Property was being used or there were, at least, efforts to use it as an AirBnB. That was detected by the Review Officer and only after being detected and the Owner asked about them were they taken off the internet as advertisements. The failure to disclose that earlier is problematic. The explanations offered by the Owner and s.22(1) thereafter are unconvincing. All of this taints the Owner's claims for exemptions premised upon principal residency by s.22(1) as her "home" or residential occupation by her or s.22(1) or both of them as long-term tenants. The evidence here overall fails to meet standards of credibility and reliability.

Given that claims for exemptions from the Vacancy Tax based on (a) s.22(1) being a permitted occupier of the Property living there as her principal residence or (b) s.22(1) or both of them as qualifying tenants during the 2020 Vacancy Reference Year fail for insufficient evidence, the Panel's view is that, while still seriously concerning, it is unnecessary to reach a conclusion on the application of sections 7.1 and 2.3(b).

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under the Bylaw. That applies whether the basis for exemption is claimed to be the permitted occupier holding the Property as her principal residence or whether it is that she (or her son or both) are claimed to be qualifying tenants of the Property.

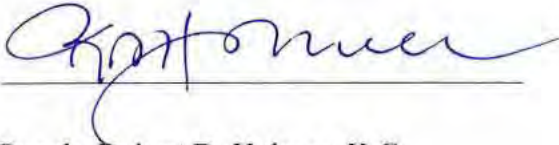
The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the



File Number: RC-2023-00001

Panel has arrived at a final determination that Vacancy Tax should be imposed on the above noted property.

Review Determination: DENIED



Panel: Robert D. Holmes, K.C.

Date: April 16, 2024

City of Vancouver Vacancy Tax Review Panel Decision

Date: April 15, 2024

File Number RC-2023-00004

Requestor (Registered Owner):
s.22(1) ("Owner")

Vacancy Reference Year: 2022

Civic Address: s.22(1)
s.22(1) ("Property")

Folio: s.22(1)

Introduction

1. This is a decision of a Vacancy Tax Review Panel of a review requested by a registered owner of real property in the City of Vancouver, who has received a determination of a Vacancy Tax review officer that the Property is subject to the Vacancy Tax.

Authority to Assess Tax

2. The Vacancy Tax By-Law No. 11674 ("Bylaw") of the City of Vancouver imposes a Vacancy Tax on every parcel of taxable property in accordance with the Bylaw. Taxable property is defined to mean residential property that is vacant, not exempt from taxation under the Vancouver Charter ("Charter"), and not exempt from the Vacancy Tax under the Bylaw. The Property is not exempt from taxation under the Charter, and so the issue is whether it is exempt under the Bylaw.

3. S.2.2 of the Bylaw provides that residential property is considered to be unoccupied if it is not the principal residence of an occupier, and, is not occupied for residential purposes by an arm's length tenant or subtenant under an agreement, for a term of at least 30 consecutive days.

4. S.2.3 of the Bylaw provides that residential property is considered to be vacant property if it has been unoccupied for more than six months during the vacancy reference period, or is deemed to be vacant in accordance with the Bylaw.

5. Accordingly, a Vacancy Tax is imposed on every parcel of taxable property unless exempt or unoccupied for six months or less during the vacancy reference period.

Background Facts

6. A property status declaration was made on behalf of the Owner for the vacancy reference year that declared the Property was vacant because it was undergoing development or major renovations. After receiving a Vacancy Tax Bill, the owner submitted a Notice of Complaint stating that this property was exempt for redevelopment or renovation.

7. The Property was purchased by the Owner on s.22(1) was purchased on s.22(1) A Salvage and Abatement permit and a Demolition permit were

issued for the s.22(1) and then a Design Review permit for a new building for the s.22(1) s.22(1) was issued on June 25, 2019, but withdrawn on November 3, 2021. There was no development permit or rezoning enquiry application for the Property under review within the 2022 vacancy reference year.

Analysis of Legal Issues Governing Review

8. In accordance with Vacancy Tax Review Adjudication processes, the Vacancy Tax Review Panel conducted a detailed, independent adjudicative review of all available evidence as submitted by both the City and the Property Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

9. S.3.2 of the By-law provides as follows:

3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

- (a) Redevelop or safely carry out major renovations to the property
 - i. For which permits have been issued by the City in the vacancy reference period, and
 - ii. Which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay.
- (b) Carry out either redevelopment or initial development of residential property that is unimproved with any dwelling units, or the rehabilitation and conservation of heritage property;
 - i. for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City in the vacancy reference period, and
 - ii. Which, in the opinion of the General Manager of Development, Buildings and Licensing or the General Manager's delegates is being diligently pursued and without unnecessary delay.

10. To be eligible for an exemption under s.3.2(a) of the By-Law, the property must be unoccupied for more than six months during the vacancy reference period in order to redevelop or conduct major renovations, and permits must have been issued to perform this work during the vacancy reference period. No permits to redevelop or conduct major renovations to the Property were issued in 2022.

11. The only evidence submitted by the Owner was 4 photos of a boarded up and fenced residential property, which do not contain a date that they were taken, and do not identify whether this building was on the Property. No acceptable primary or secondary documents were provided to indicate that the property was occupied by the Owner or authorized occupant, and the Owner confirmed that the Property was not occupied in any event. To be eligible for an exemption under

s.3.2(b) of the Bylaw the property must be vacant land and a complete rezoning enquiry or application or development permit application must have been submitted and be under review by July 1 of the vacancy reference period. If it is assumed that these photos were of a residential building on the Property and were taken during the vacancy reference year, this would by itself take the application out of the ambit of s.3.2(b) because if the Property is not vacant land it must be undergoing major renovations or redevelopment with permits issued more than six months before the end of the vacancy reference year in order to qualify for an exemption.

Decision

12. In conclusion, having considered all documents, evidence and submissions of the Owner and the City, as well as having considered the relevant provisions of the Bylaw, the Panel determines that the reason the Property was unoccupied for more than six months in 2022 was not because it was carrying out redevelopment or initial development of residential property that is unimproved with any dwelling units, for which a development permit application is under review by the City. Accordingly the Property is not eligible for an exemption under s.3.2 of the Bylaw.

Review Determination: DENIED

A handwritten signature in blue ink, appearing to read 'Leslie E. Maerov', is written over a horizontal line.

Panel: Leslie E. Maerov

Date: April 15, 2024

**The City of Vancouver Vacancy
Tax Review Panel Decision**

Date: April 12, 2024

File Number: RC-2023-00005

Requestor: s.22(1)
(the "Owner")

Vacancy Reference Year: 2020

Folio: s.22(1)

Civic Address: s.22(1)
s.22(1)
(the "Property")

Introduction

At the request of the Owner of the Property, The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

The Owner's 2020 Declaration

The Owner filed a declaration with the City of Vancouver claiming the Property was exempt from the Vacancy Tax for the 2020 Vacancy Reference Period on grounds that it was occupied as a "Principal Residence" by a "Permitted Occupant."

The "Permitted Occupant" designation aimed to fit within the definition of "occupant" in section 1.2 of the Vacancy Tax Bylaw:

"occupier" means a registered owner or a person who occupies residential property with the permission of the registered owner but is not a tenant or subtenant;

For the exemption to apply, the permitted occupant must make the Property their "principal residence." The Bylaw defines a "principal residence" as follows:

"principal residence" means the usual place where an individual lives, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence;

In passing, the Panel notes that Bylaw 13749, enacted on February 8, 2022, altered the version of this definition that was in place in 2020 so that instead of saying "his or her home and conducts his or her daily affairs", the "his or her" was changed to "their". Nothing turns on that change for purposes of this decision.

Audit of the Owner's Declaration Regarding Principal Residence

By a letter dated January 11, 2022, from the Vacancy Tax Office, the Owner of the Property was advised that an audit of the claim for exemption from the Vacancy Tax was being conducted. The Owner was asked to complete the standard online questionnaire and to provide supporting documents for the claim of exemption by February 14, 2022.

In response to the questionnaire, the Owner continued to rely upon the principal residence by a permitted occupant basis for exemption. He set out that the occupants of the Property in the 2020 Vacancy Reference Period were s.22(1) was described s.22(1) s.22(1) the s.22(1). The responses also set out that the occupant did not own property in Vancouver and was a resident of British Columbia for tax purposes. Those responses must apply to s.22(1) s.22(1).

The Owner was asked in the questions why he had declared the Property exempt for 2017 and 2018 under the principal residence exemption as his own principal residence. He responded that he did so as s.22(1). That response does him no credit, of course.

By a letter dated March 2, 2022, the Auditor advised the Owner that further information was required and set out the types of identification and materials showing the use of the Property as a principal residence that should be located and produced. The list of such materials tracks what is set out in section 4.7, 4.8 and 4.9 of the Bylaw. A deadline of March 14, 2022 was given.

The Owner's Change of Position As To Exemptions

In a telephone conference between the Auditor and s.22(1) on March 24, 2022, the Auditor was advised that s.22(1) was a tenant of the Property in 2020 and that the Owner would provide further information. Tenancy for residential purposes is a different basis for exemption from the tax.

By a letter dated March 24, 2022, the Auditor wrote to the Owner and requested documents and information pertaining to the alleged tenancy of the Property by s.22(1). Among other things, the Auditor sought a copy of the Residential Tenancy Agreement, bank statements showing rental income received, a 2020 Vancouver business licence of a rental property, homeowner's insurance showing rental coverage, and a Form K showing that the tenant had agreed to abide by the Strata Corporation bylaws. A deadline of April 4, 2022 was given for complying with these requests.

Some materials were provided, but for the most part they were not the ones specifically requested by the Auditor.

One item provided was a letter from s.22(1) dated March 30, 2022. He set out that he had been a tenant of the property since 2010, but the original tenancy agreement had expired and he was thereafter on a month-to-month tenancy. Notably, he does not say that the original tenancy agreement or any amendments made to it in writing have been lost.

On April 7, 2022 the Owner confirmed to the Auditor that he wished to proceed on the basis of amending his declaration so that instead of claiming principal residency of a permitted occupant or occupants, it would be dealt with on the basis that the Property had been tenanted since 2010 and was tenanted in 2020.

That day, there was also a teleconference between the Auditor and s.22(1). The Auditor had some questions about the documentation provided by the Owner. One item was a "Form K" for the Strata Corporation that provided notice to it that s.22(1) was a tenant of the Property. A copy of that had been provided by the Owner as part of an email dated November 16, 2020 from the property management company to him. The Auditor noted that the Form K had been rejected by the Strata Corporation as it referred to a tenancy going back to 2011 and was supposed to have been provided to them within 2 weeks of a tenancy commencing. s.22(1) responded that the previous concierge had not asked for that form and that a change to a new one had resulted in having to fill it in and provide it. The Auditor requested a copy of the original Form K as well as the Residential Tenancy Agreement. The Owner advised that, in his view, obtaining further Form K documents from the Strata Corporation was not warranted. As for a copy of the Residential Tenancy Agreement, the Owner said that had been lost. That was the first time the suggestion that it was lost appears to have been made.

The Auditor noted concerns relating to the Form K as follows:

The name of the landlord matches the registered owner. Address of rental property matches civic address. The tenant's names match the information provided at declaration. Form K was signed but no date stamp was provided. Form K declares tenancy started January 18, 2011. Evidence does not appropriately support tenancy at the civic address for at least six months of the relevant vacancy reference period.

The Auditor also inquired about the information produced in some of the Owner's submission that showed s.22(1), including one involving s.22(1) and some of s.22(1) having the Property as their address. He questioned whether the Property was used for residential or business purposes. s.22(1) advised that it was used as a "home office" and that doing that kind of business was acceptable in a residential property. The Auditor advised that if it were residential, there should be documents showing that the Property was used as such, instead of documents relating to businesses. s.22(1) advised that she regarded the Auditor's inquiries as amounting to an invasion of privacy and said nothing more would be provided.

A short time later on April 7, 2022, the Owner and s.22(1) called the Auditor and discussed matters further. The Owner explained the copy of the Form K submitted to the Auditor was the original one filed with the concierge of the building in which the Property is located and that that was done in 2011. There had been turnover of property management companies and concierges and the new concierge requested a new form. A new one was completed, but that occurred in January 2021. The Owner's position was that the tenancy had existed since 2011 and was in place throughout 2020.

The Auditor explained the requirements under the Bylaw for proving residential use and the Notice of Complaint process if they were not satisfied at the end of the Audit.

The Auditor noted that the Owner had supplied income tax information showing that the Property was rented in 2020 and that rent corresponding to the \$600 per month for 12 months was reported on his tax return. On the other hand, no written tenancy agreement was provided. As noted, the Owner had explained that it had been lost.

Audit Pre-Determination Letter

In a pre-determination notice letter dated April 7, 2022, the Auditor wrote to the Owner, recounted that initially the Property had been declared exempt by him on grounds of it being the principal residence of the Owner or a family member or other permitted occupant, but that now it was being held out as having been tenanted.

The Auditor reviewed the fact that the documentation provided in an effort to show that s.22(1) was resident there did not support that finding. It showed instead that s.22(1) as her principal residence. Thus, the BC Hydro bills showing her name and the Property's address did not assist. Neither did copies of s.22(1) s.22(1) attention and using the Property's address.

As for s.22(1), there were deficiencies in the materials submitted concerning his occupancy of the Property, whether as a permitted occupant or as a tenant. Further materials were requested if the Owner wanted to maintain that the Property was exempt from the Vacancy Tax for 2020. Examples of what might suffice were listed and tracked previous information provided to the Owner concerning the kinds of information that typically existed and should be supplied. Those paralleled what sections 4.7, 4.8 and 4.9 of the Bylaw set out and could not have been a surprise to the Owner. A deadline of April 19, 2022 was given.

It does not appear that further materials were provided.

Audit Determination Letter

By a letter dated April 28, 2022, the Auditor advised the Owner that the audit determination was that the exemption claimed was not applicable:

Based on the evidence provided, the City determines that this property was not occupied by a residential tenant or a subtenant for at least six months in the applicable vacancy reference period, for a term of at least 30 consecutive days, per Section 2 of the Vacancy Tax By-Law (No.11674).

Owner's Notice of Complaint and Review by Vacancy Tax Review Officer

The Owner filed a Notice of Complaint and sought review by a Vacancy Tax Review Officer. The Owner provided further materials in support of the claim for exemption, including an Affidavit sworn by s.22(1) in May 2022 that sets out his evidence about use of the Property.

s.22(1) says there that:

- (a) He has been a friend of s.22(1)
- (b) He rented the Property for all of 2020 for \$600 a month, which he paid in cash.
- (c) The “arrangement” he had allowed for s.22(1), to stay in a second bedroom in the Property whenever s.22(1)
- (d) Apparently, s.22(1) s.22(1) The “arrangement” required that she pay the Hydro bills for the Property.
- (e) s.22(1) had some mail addressed to her delivered to the Property and s.22(1) kept it for her s.22(1)
- (f) s.22(1) updated the address on his own s.22(1) in January 2021 as he “was notified when there was mail at my old address and I would drop by to pick it up.”
- (g) s.22(1) s.22(1)
- (h) Documents setting out their address at the Property were provided by him in the course of the Audit as, “proof that this is my address.”
- (i) The Form K arose as he needed a replacement fob for access to the building in which the Property is located.
- (j) That had led to the Form K and the exchange between the Owner and the Concierge of the building in November 2020.

VanCity statements for an account in the name of s.22(1) were provided by s.22(1) Those show the Property as the s.22(1) mailing address. The statements do not have s.22(1) name on them.

An ICBC Address Search dated August 30, 2022 for s.22(1) set out his Drivers Licence Number, gave an effective date for the licence of 2016-02-09 and set out the Property as his address. A copy of s.22(1) issued January 15, 2021 was provided to the Auditor. It has the Property address on it but was issued after 2020. These documents are inconsistent with s.22(1) explanation of updating his address to be that of the Property only in 2021.

The Vacancy Tax Review Officer notes that “Online queries suggest that the permitted occupant is tied to a number of addresses, notably a rental building at s.22(1).” That reinforced skepticism about the declarations and evidence provided. The Owner and s.22(1) dealings with the Auditor and Review Officer did not allay those. Indeed, Review Officer noted that:

The homeowner again responded that he could not get in contact with the permitted occupant – this raises considerable risk, as the compliance analyst cannot compare any secondary documents addressed directly to the permitted occupant. The file should be considered high risk, and based

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on current evidence, is utilized as a second home for family while visiting Vancouver, as well as an office address for various companies. Based on the current file, 2017, 2018, and 2019 declarations are also considered high risk, and 2021 is set to be audited, pending the outcome of this complaint.

By a letter dated August 29, 2022, the Vacancy Tax Review Officer advised the Owner that additional evidence was required by September 9, 2022 to establish the exemption that was claimed:

Additional evidence or further clarification is required in order to fully substantiate your property status declaration. Failure to respond may result in the imposition of the Vacancy Tax.

Please provide both of the following document(s):

- **s.22(1)** Personal Notice of Assessment **issued in 2020**
- All financial information, including his SIN, may be redacted. Only page one, displaying his name, issued date, and mailing address, is required. Generally, this is a 2019 NOA.
- ICBC Residential Address History for **s.22(1)**
<https://onlinebusiness.icbc.com/cljo/>

By a letter dated September 8, 2022, the Vacancy Tax Review Officer advised the Owner that the City had “reactivated the online compliance portal so you can upload the requested documentation, and respond to the questionnaire” and that the deadline was extended to September 16, 2022.

An email dated September 8, 2022 from **s.22(1)** addressed to **s.22(1)** refers to certain income tax matters apparently of the Owner, but has no address of **s.22(1)** and the Property’s address is not on it. This document does not correspond to the information requested concerning **s.22(1)**

By a letter dated September 27, 2022, the Vacancy Tax Review Officer advised the Owner that additional evidence was required, repeated earlier requests and gave a deadline of October 7, 2022, as follows:

- s.22(1)** personal CRA Notice of Assessment issued in 2020 – first page only
- All financial information and SIN may be redacted, if preferred

It does not appear that was provided.

Vacancy Tax Review Officer Determination

By a letter dated March 8, 2023, the Vacancy Tax Review Officer advised the Owner that the claim for an exemption from the tax based upon the Property having been occupied for at least 6 months in the 2020 Vacancy Reference Year was denied. The reasons for that were set out as follows:

The Vacancy Tax Review Officer considers that the evidence provided was not sufficient to determine that this property was the principal residence of an occupier for at least six months in the vacancy reference period, and is considered vacant under the Vacancy Tax By-Law.

A “principal residence” means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver’s licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence

Owner’s Request for Panel Review

The Owner was not satisfied with that determination and on March 13, 2023 requested that this matter be reviewed by this Panel. In an email to the Review Officer, the Owner set out the following as his grounds and submissions for this review:

I have submitted all reasonable proof with respect to my [Property]. I should not be subjected to the Vacancy Tax based on my submissions. To date, I have provided the tenant’s, s.22(1) ICBC Residential Address, s.22(1) CRA Business Number letter from CRA and s.22(1) bank account statements which all match the suite in question. Furthermore, I have provided my Income Tax return that I rented the suite in question. I have provided a 2011 Form K with s.22(1) s.22(1) name as the tenant which had expired and then provided a renewed Form K in late 2020 with s.22(1) named as the tenant.

You may visit the suite and also speak or interview the 24-hour Concierge staff at your earliest convenience to confirm that s.22(1) is a long term tenant at that suite.

From time to time, the building management company, s.22(1) [phone number set out] accesses all suites to conduct fire, water and electrical inspections. You may contact the building management company and the s.22(1) [phone number set out] with my full authorization to confirm that the suite has always been tenanted. I could also try asking the s.22(1) if they will write a letter confirming that s.22(1) is a long term tenant at the suite in question.

The documents submitted by or for the Owner had been reviewed by the Review Officer. That had led to further questions and further requests for documents and information. Some of those requests were not dealt with, but instead met with refusal to get further information (e.g., additional Form K documents from the Strata Corporation, s.22(1) personal CRA Notice of Assessment issued in 2020 – first page only, showing his address). Some that the Auditor had requested had also gone without production of requested documents (e.g., bank statements showing rental income received, a 2020 Vancouver

business licence of a rental property, homeowner's insurance showing rental coverage). And some (e.g., the Residential Tenancy Agreement) were not produced as they were said to be lost, but no information about their contents was spelled out by the Owner and vouched for by s.22(1) (e.g., whether the arrangement was for the whole suite or just a room, what use of common facilities was permitted, what the rent was prior to the alleged 2020 arrangement for \$600 per month made after the COVID emergency was declared, how rent was paid and so on).

Further, while providing contact information of others was perhaps appropriate at an earlier stage, after the Review Officer's determination letter, the evidentiary record in this matter was closed.

Issues on this Review

First Issue -- What legal standard applies to interpreting the Vacancy Tax Bylaw and who bears the burden of proof to establish an exemption from the Vacancy Tax?

Second Issue -- What does the Vacancy Tax Bylaw require for the Owner and Property here to be exempt from the Vacancy Tax?

Third Issue -- What standards of review by the Panel apply to the Owner's claim for an exemption from his initial declaration, through the audit process and that of the Vacancy Tax Review Officer's review and determination?

Fourth Issue -- Did the Owner establish that the Property was exempt from the Vacancy Tax for the 2020 Vacancy Reference Period as either a principal residence or as tenanted within the meaning of the Vacancy Tax Bylaw?

Discussion and Analysis

First Issue -- What legal standard applies to interpreting the Vacancy Tax Bylaw and who bears the burden of proof to establish an exemption from the Vacancy Tax?

In interpreting these bylaw provisions, the law has developed certain principles. Thus, in *Bell Express/Vu Limited Partnership v. Rex*, 2002 SCC 42, Iacobucci, J., for the Supreme Court of Canada, quoted at length from texts and prior case law but came to rest on this principle:

26 In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

He went on to note that "in the federal legislative context, this Court's preferred approach is buttressed by s. 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides that every

enactment “is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”

With regard to the Vacancy Tax Bylaw, the *BC Interpretation Act* applies to assist in interpretation. It has a parallel provision to the federal one in section 8: “Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”

Where there is ambiguity courts can and do look beyond the text of the words in a statute. The aim is to determine which is the appropriate meaning to give the words. But, as Iacobucci, J., states at para. 29, in order to apply principles for resolving ambiguity, there must be an ambiguity to start off with:

- 29 What, then, in law is an ambiguity? To answer, an ambiguity must be “real” (*Marcotte, supra*, at p. 115). The words of the provision must be “reasonably capable of more than one meaning” (*Westminster Bank Ltd. v. Zang*, [1966] A.C. 182 (H.L.), at p. 222, *per* Lord Reid). By necessity, however, one must consider the “entire context” of a provision before one can determine if it is reasonably capable of multiple interpretations. In this regard, Major J.’s statement in *Canadian Oxy Chemicals Ltd. v. Canada (Attorney General)*, 1999 CanLII 680 (SCC), [1999] 1 S.C.R. 743, at para. 14, is apposite: “It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids” (emphasis added), to which I would add, “including other principles of interpretation”.

In the present context, the Panel is dealing with a taxing provision in a bylaw. The law used to be that such provisions were construed strictly against the taxing authority when they involve the imposition of a tax. See, for example, the comments by Estey, J., in *Stuart* at p. 577 about that part of legal history: “any ambiguities in the charging provisions of a tax statute were to be resolved in favour of the taxpayer; the taxing statute was classified as a penal statute.” But equally so, with claims for exemptions, taxpayers were accorded no favors:

“Where the taxpayer sought to rely on a specific exemption or deduction provided in the statute, the strict rule required that the taxpayer’s claim fall clearly within the exempting provision, and any doubt would there be resolved in favour of the Crown. See *Lumbers v. Minister of National Revenue* (1943), 2 DTC 631 (Ex.Ct.), affirmed 1944 CanLII 52 (SCC), [1944] S.C.R. 167; and *W.A. Sheaffer Pen Co. v. Minister of National Revenue*, 1953 CanLII 758 (CA EXC), [1953] Ex. C.R. 251. Indeed, the introduction of exemptions and allowances was the beginning of the end of the reign of the strict rule.”

In the result in the *Stuart* case, the Supreme Court rejected the “literal” approach to construing tax statutes and shifted interpretation somewhat so as to allow for a somewhat more liberal approach. That approach involved looking at the words in question in the total context of the taxing statute. The purpose of doing so was to ensure that the objective and spirit of the statute were applied.

In the recent case of *Deans Knight Income Corp. v. Canada*, 2023 SCC 16, however, the Supreme Court noted that what remained was a general principle drawn from a decision of the House of Lords:

[46] In *Commissioners of Inland Revenue v. Duke of Westminster*, [1936] A.C. 1 (H.L.), Lord Tomlin recognized the foundational principle that “[e]very man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be” (p. 19). The principle that taxpayers can order their affairs to minimize the amount of tax payable has been affirmed by this Court on numerous occasions (see, e.g., *Stubart*, at p. 552; *Trustco*, at para. 11; *Copthorne*, at para. 65).

Further, the law provides that a taxpayer seeking an exemption from tax is usually deemed to have the burden of proving factual matters required to establish the exemption. Of course, that applies to factual matters and not to interpretation of the law. There is no burden on any party with respect to interpreting the law. That is the role of the adjudicator.

The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.*, 2006 SCC 20. At para. 26, the court noted that “The fundamental rules on the allocation of evidentiary burden in this matter remain valid.... The taxpayer bears the burden of displacing the Minister’s factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law. At para. 29, the court added that: “the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it — the duty to ascertain the correct interpretation lies with the court.”

Second Issue – What does the Vacancy Tax Bylaw require for the Owner and Property here to be exempt from the Vacancy Tax?

The Vacancy Tax Bylaw was duly enacted by the Council of the City of Vancouver following on amendments made by the Legislature to the Vancouver Charter. Specifically, Part XXX of the Vancouver Charter was put in place so as to authorize the City of Vancouver to impose a vacancy tax. Section 616(1) sets out that:

The Council may, by by-law, impose an annual vacancy tax on a parcel of taxable property in accordance with this Part.

“Taxable property” is defined in section 615 as “residential property” that is “vacant property” not otherwise expressly exempted from taxation by other provisions of the Vancouver Charter. Section 615 goes on to define “vacant property” as “residential property that is unoccupied during the vacancy reference period for at least the total length of time specified by a vacancy tax by-law and in the circumstances established in the vacancy tax by-law.” Section 617(b) provides that Council is required in the Vacancy Tax Bylaw to “establish circumstances in which residential property is to be considered unoccupied.”

Under that authority, the Vacancy Tax Bylaw provides in section 2.1 that the tax applies to “every parcel of taxable property” and in the definition section tracks the same definition for “taxable property” as in the Vancouver Charter. Next, section 2.2 provides that property is considered unoccupied where “the residential property is not the principal residence of an occupier” and where it “is not occupied for residential purposes by an arm’s length tenant under a tenancy agreement.” That ties in with section 2.3, which states that “Residential property is considered to be vacant property if (a) it has been unoccupied for more than six months during the vacancy reference period, or (b) it is deemed to be vacant property in accordance with this by-law.”

From that it is apparent that the analysis starts with the tax being imposed on taxable property. Next, taxable property is noted as being vacant property. Then section 2.3 defines vacant property as being “unoccupied” property. Then section 2.2 defines when property amounts to being “unoccupied.”

In this case, the Owner sought to fit within the provision exempting the Property from tax if it was “the principal residence of an occupier.” Section 1.2 provides that that ““occupier” means a registered owner or a person who occupies residential property with the permission of the registered owner but is not a tenant or subtenant.” The definition of “principal residence” was set out earlier. When asked, the Owner indicated that the “occupier” here was not him, but rather s.22(1) obviously does not fit within the definition as s.22(1) s.22(1) does not fit as, after several inquiries, he, the Owner and s.22(1) all said he was really a tenant. As a tenant, by definition in the Bylaw, the claim for exemption for an occupier having the Property as a principal residence did not work.

Even if he were not proven to be a tenant, it does not appear that s.22(1) would meet the requirements of the Bylaw for establishing that he was a permitted occupant who had the Property as his permanent residence. Simply put, he lacked sufficient credible documentation to demonstrate that and his own statements refer to being there as an “arrangement”. Further, his statements were unclear whether he had just one room or the whole suite. Also, the fact s.22(1) detracts from this being his principal residence.

The next tack of the Owner was to try to fit within the exemption for having the Property leased out to s.22(1) as a tenant. For that to work, there had to be a tenancy agreement. Section 1.2 of the Bylaw sets out that a “tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.” No written tenancy agreement was ever produced. The Owner said it was lost. By itself that is not necessarily fatal to a claim for an exemption. The definition allows for oral and even implied tenancy agreements. But it should be possible to flesh out with other evidence (e.g., affidavits, statutory declarations, documents evidencing a tenancy, information as to rent amounts agreed upon from time to time and how they were paid, and other details). Those were similarly lacking.

The question becomes whether the evidence put forward establishes that. Section 2.2 says that there must be “an arm’s length tenant under a tenancy agreement, or by an arm’s length subtenant under a

sublease agreement, for a term of at least 30 consecutive days.” Section 2.3 says that the period of occupancy must be at least six months for the Property not to be considered vacant.

s.22(1) says “I rented [the Property] for all of 2020 for \$600 per month which I paid in cash.” It is odd that he does not say he lived there. Also, he refers to the dealings with the Owner and s.22(1) as an “arrangement”, not an agreement.

As for “possession of a rental unit” as part of the definition of “tenancy agreement” in the Bylaw, s.22(1) does not say he had “possession” of the “rental unit.” Indeed, he acknowledges that what he had was not exclusive possession, but rather something that had the s.22(1) coming and going at will, s.22(1) and presumably using the bathroom, kitchen and other areas.

Exclusive possession of the whole of a property is not, of course, required in order for there to be a “rental agreement.” Situations exist where what is rented includes parts that are “common areas” or “services and facilities” that the tenant and other tenants or the landlord or others the landlord authorizes may use. But there has to be some part of the rental unit that is exclusively the tenant’s or the word “possession” loses meaning.

s.22(1) does not identify anything that was exclusively his part of the rental unit. One could try to surmise that there was a first bedroom that was his from the statement in his Affidavit about the 2nd bedroom being where s.22(1). But he does not say so and it should have been readily apparent to him and the Owner that being clear and direct was required.

The City of Vancouver policy in interpreting the Bylaw in relation to having part-only of a residential property serve as the principal residence or a tenancy is that “A property will not be subject to the tax if at least one dwelling on the property is a principal residence or it is rented for residential purposes for at least six months of the current year in periods of 30 or more consecutive days.” That applies to multi-unit apartment buildings on a single title and also to basement suites and laneway homes on a single land title property. The policy seems to be that as long as one “dwelling unit” is occupied as a principal residence or by a tenant, then the whole of the property is taken to be exempt from the Vacancy Tax.

It strains the language of the Bylaw, however, to extend it as far as the Owner seeks here. Assuming, for the moment, that s.22(1) was supposedly occupying part of the Property as a “rental unit”, nothing in the evidence says clearly what part was agreed to be his. He refers to this as an “arrangement” with the Owner and s.22(1). It is all too vague to meet the requirements of the Bylaw.

Also, the Vacancy Tax Review Officer’s note that an online search showed that s.22(1) was tied to addresses other than the Property is concerning. Concerns exist also about s.22(1) evidence that he only changed his ICBC Driver’s Licence address in 2021 to match the Property address, notwithstanding that the ICBC search showed he had the Property’s address on his licence from 2016 to 2021. In his Affidavit, he refers to only making the address change in 2021 as “I was notified when there was mail at my old address and I would drop by to pick it up.” He does not say what his old address was. It seems highly unlikely that it was wherever he lived prior to 2010 or 2011 when the

“tenancy” of the Property allegedly began. Matters were left in a murky state by the Owner on that point as when the Review Officer asked the Owner for information on what other addresses s.22(1) had, the Review Officer was told “s.22(1) and not responding.”

Also, there is the fact that s.22(1) used the Property’s address as their own. That suggests a business use, not a residential one. s.22(1) comments to the Auditor that argued about use of the Property as a “home office” do not help the case for exemption from the tax.

The Review Officer also notes that suspicions about the evidence are heightened by the fact that “Various SEC filings and other business-related search queries confirm that the homeowner, the s.22(1) s.22(1) The nature of the business of these s.22(1) is not explained anywhere. But the existence of multiple addresses and properties and the transient or temporary use to which s.22(1) and quite possibly s.22(1) put them does not conform to the Bylaw’s concepts of occupation and residency.

Third Issue – What standards of review by the Panel apply to the Owner’s claim for an exemption from his initial declaration, through the audit process and that of the Vacancy Tax Review Officer’s review and determination?

The Panel must consider whether the Owner has established that an exemption applies. The Owner has not provided any submissions on how to interpret the Vacancy Tax Bylaw. On their face, the provisions appear to be clear. In terms of interpretation of the law, the focus will be on how the provisions apply to the facts gleaned from the declarations, documents and information and other evidence included in the record of this case.

One matter of interpretation that will require careful consideration is the question of how the Bylaw says evidence is to be evaluated and what should be done in situations where some evidence is given, but there are issues relating to credibility, reliability, and consistency that engage questions whether it is sufficient to establish an exemption. While that is primarily a matter for weighing evidence, it also involves the standards of review provided for in the Bylaw.

Section 4.5 of the Bylaw provides that annual declarations must be made by owners of property and delivered to the City in a timely way. Section 4.6 sets out how that is to be reviewed by the Collector of Taxes:

4.6 The Collector of Taxes must review each completed property status declaration and determine whether the information provided by a registered owner is sufficient, in the opinion of the Collector of Taxes, to establish the status of a residential property during the vacancy reference period.

So, the Bylaw recognizes that information provided may or may not be sufficient and gives the initial role of reviewing what is submitted and determining whether a claimed exemption applies is to the

Collector of Taxes. In practice, the City's Vacancy Tax Office conducts audits of some declarations through its audit staff.

Section 4.7 carries that forward, saying that "The Collector of Taxes may require a registered owner to provide information" and then enumerating certain classes of information. Section 4.8 then provides that "The Collector of Taxes may require a registered owner to submit evidence to verify a property status declaration and the status of the property." That is done by the Auditor assigned to a case.

Section 4.9 then sets out that "The information or evidence required" may include, but is not limited to, a lengthy list of items and potentially a statutory declaration or affidavit. The list of items are those that, practically speaking, are things that a residential property owner and those the owner permits to use and occupy the property should have readily available. They are items that, for example, tend to confirm that a property is someone's principal residence or that it has been leased to a tenant.

Section 4.12 is notable in that it says that once the information and evidence has been received it must be reviewed by the Collector of Taxes and a determination made whether the property is subject to the tax or not. It adds that if one of the deeming provisions of the bylaw applies then the Collector of Taxes need not do that. The reason is clear: the bylaw itself makes the determination through the combined effect of sections 7.1 and 2.3(b).

Examples of the application of the deeming provisions include those set out in section 7.1:

7.1 A parcel of residential property in respect of which a registered owner:

- (a) fails to make a property status declaration as required by this by-law;
- (b) makes a false property status declaration;
- (c) fails to provide information or to submit required evidence to the Collector of Taxes in accordance with this by-law, including, without limitation, the information or evidence that may be required pursuant to Sections 4.7, 4.8 or 4.9 of this by-law; or
- (d) provides false information or submits false evidence to the Collector of Taxes;

is considered to be vacant property and is subject to the vacancy tax.

Those line up with sections 5.3 (owner must not make a false declaration and must not fail to correct a false declaration) and 5.4 (owner must provide information and documents when requested by Collector of Taxes or Vacancy Tax Review Officer and "must not provide false information or submit false evidence to the Collector of Taxes or vacancy tax review officer").

Section 7.1 is clearly a regulatory provision and is distinct from the offence provisions of the Bylaw. It deals solely with deeming property to be vacant property and subject to tax in the instances spelled out.

Section 8 provides for offences. The question whether an offence described in section 8 requires proof that a violation of the Bylaw was done knowingly (i.e., with what the law calls "*mens rea*") is beyond

the scope of this review. But whether a deeming provision such as section 7.1 requires it is not. In the Panel's view, the deeming provision does not require proof that a registered owner knowingly did one or another of the listed items in that section. The consequence to the owner if section 7.1 is applied is that the property "is considered to be" vacant and subject to tax. That is not punishment, but is rather a regulatory consequence under section 2.3(b). It is sufficient that the facts show that, for example, the owner failed to make an annual declaration as required by the Bylaw, failed to provide information or required evidence in accordance with a request made pursuant to the Bylaw, or that a false declaration or false information or evidence were given. Also, there is no parallel in the language used in section 7.1 of the Bylaw to provisions seen in the statutes prescribing offences that a declaration, statement or evidence has to be made "knowing it to be false" to establish that an offence has occurred.

Section 6.2 provides that the Owner may complain to the Vacancy Tax Review Officer that the determination made was incorrect because of an "error or omission" by the Auditor or by the Owner leading to the tax being imposed. Section 6.3, 6.5 and 6.6 set out the process to be followed and the information required, including that "the vacancy tax review officer may require the registered owner to provide any of the information or evidence that is set out in Sections 4.7, 4.8 and 4.9" (section 6.6). Section 6.7 provides that the Review Officer "may refuse a complaint if the registered owner or complainant fails to comply with the provisions of section 6.3, 6.5 or 6.6 of this by-law."

The Auditor and the Vacancy Tax Review Officer relied upon evaluating the evidence received and deciding whether that was inappropriate or insufficient. While they note that various matters proffered by the Owner were not true (e.g., the original declaration) and had to be corrected, they rest their decisions primarily on the lack of sufficient evidence and the inconsistencies and gaps in the evidence submitted.

Section 6.13 of the Bylaw sets out what an owner must include in a request review involving this Panel:

6.13 The review request must:

- (a) identify the residential property in respect of which the request is made;
- (b) include the full name of the requestor and a telephone number or email address at which the requestor may be contacted during regular business hours;
- (c) indicate whether the requestor is the registered owner of the property to which the request relates;
- (d) if the requestor is an agent acting on behalf of the registered owner, include information regarding the nature of their terms of agency and authority to act on behalf of the registered owner; and
- (e) state the grounds on which the review request is based.

As noted above, the March 13, 2023 email from the Owner to the Review Officer appears to be the review request. It re-argues that a tenancy existed and refers to materials put forward, but does not

explain why other requests made were not complied with. It sets out phone numbers for the Concierge and Strata Property manager, but previous efforts to get the Owner to get whatever information and evidence they had and put it before the Auditor or Review Officer had not been addressed by the Owner. The Bylaw does not put the obligation on the Auditor, Review Officer or Collector of Taxes to get such information. The Owner is to do so. That applies with particular emphasis when the Owner is repeatedly asked for certain information, is told what typically should be available to support an exemption claim, and then skirts around that and, in effect, tells the Auditor and Review Officer that the Owner will not get more.

Section 6.15 sets out how this Panel is to deal with the review request. The Panel "must, within a reasonable time, consider the review request based on the materials provided pursuant to section 6.13 and, without a hearing, make a determination on the review, advise the registered owner in writing of its determination and, if the review request is successful, rescind the vacancy tax notice." That parallels the process for the Collector of Taxes and the Vacancy Tax Review Officer. They are similarly required to consider the materials before them and make a determination whether the tax is payable or not. Section 6.11, reinforces that by saying that the Panel's job is to make "a review of that determination by the vacancy tax review panel."

The Panel considers it appropriate to review the Vacancy Tax Review Officer's determination and come to its own determination based on the facts and evidence provided with the review request. That includes not just reviewing the determinations made by the Collector of Taxes or the Vacancy Tax Review Officer, but also independently assessing the evidence. It does not involve, however, the Panel going outside the evidentiary record and contacting the Strata Property manager, the Concierge or others to get more information. That was the Owner's responsibility prior to the Review Officer's determination.

The Panel's review involves not just deciding whether the evidence was sufficient to establish that the Property was exempt. It also potentially includes the Panel deciding whether the deeming provisions of the Bylaw applied. That must be so given that if the Vacancy Tax Review Officer had expressly found that a deeming provision applied, that would have to be part of the Panel's Review. Where the Review Officer has found, as here, that "the evidence provided was not sufficient", but the reason for the insufficiency was that one or another of the factors in section 7.1 existed, then it must be the case that the deeming provision affords another basis for decision that the Panel could consider and apply.

Fourth Issue -- Did the Owner establish that the Property was exempt from the Vacancy Tax for the 2020 Vacancy Reference Period as either a principal residence or as tenanted within the meaning of the Vacancy Tax Bylaw?

The Vacancy Tax Bylaw is clear that in order for the Vacancy Tax not to apply to a property, the owner must establish that it falls within one or another of the exemptions set out. Both the Auditor and the Vacancy Tax Review Officer determined that the Owner did not.

The Panel agrees with those determinations.

The initial declaration filed by the Owner was false in asserting that the principal residence exemption applied. When asked to explain that, the Owner identified s.22(1) as meeting the principal residency requirements. Neither was true.

The Owner's explanations with regard to s.22(1) which served as her principal residence and that the Property in Vancouver, BC, was only a temporary or transient location she used when visiting.

The Owner's explanations regarding s.22(1) changed from asserting that the Property was his permanent residence as a "permitted occupant" to being instead that he was a "tenant." A new declaration was provided seeking exemption on the footing that the tenancy exemption applied.

The tenancy exemption claim itself was also suspect. If it were really the case that s.22(1) rented and occupied the Property under a tenancy agreement from 2010 or 2011 onwards, there would probably have been a lengthy trail of documents that could readily have been produced to demonstrate that. There weren't.

Getting the documents that were actually produced required repeated requests made to the Owner. Instead of willingly producing the documents, information and evidence requested, the record discloses that the Owner and s.22(1) argued and declined to do so. s.22(1) argument about corporate documents showing use as a "home office" and that there should not be further inquiry is one example. Her argument that asking for more information from s.22(1) would invade his privacy is another. The Owner declined to go further and get certain other documents requested (e.g., other versions of the Form K), even though if they existed the Strata Corporation or its Property Manager or Concierge would likely have them and had no reason not to comply. The record indicates that instead of a willingness to put forward materials to support the claims made, the Owner was reluctant and not very cooperative. He was repeatedly asked and must have known that it was his obligation to prove that he fit within an exemption.

Much of what was supplied by or for the Owner's case was of no relevance (e.g., the documents showing that s.22(1) used the Property as a mailing address and the VanCity s.22(1) s.22(1) showing that s.22(1) did likewise, but the statements had no mention of s.22(1) on them).

Some of what was provided was inconsistent and vague and, on a careful reading, does not really support the Owner's position. The Affidavit of s.22(1) is perhaps the most striking example.

- (a) The Panel has already noted the Affidavit's vagueness about whether and what portion of the Property were exclusively his and what was for the common use of him and s.22(1), assuming that was the "arrangement."
- (b) The fact that he just says he "rented" the Property (and not just a room in it) and does not state that he occupied it is telling.
- (c) His evidence about the driver's licence address is that did not change his address on it until 2021 to set out the Property's address, but the ICBC search shows otherwise.

- (d) He refers to using the Property's address as "updating" it from an old address. But the fact that he says he "didn't bother" to make the change earlier than 2021 as he used his "old address" for mail, "was notified" by someone not identified and simply picked it up there defies belief if one considers that he supposedly took up tenancy of the Property in 2010 or 2011. The Owner did not help his case on this point when he told the Review Officer that s.22(1) and not responding," when asked to "Confirm s.22(1)' previous address, per his affidavit."
- (e) The fact that s.22(1) says that he had an "arrangement" rather than a lease agreement is also telling against the tenancy concept.
- (f) He says as well that he paid in cash the \$600 per month during 2020. The Owner ascribes that to COVID, but the COVID emergency was not declared until March 2020.
- (g) The Owner and s.22(1) also seem to have wanted to leave the impression that \$600 per month was less than what was paid previously. That is perhaps a tacit acknowledgement that the amount was below what market rent would be for a two bedroom apartment in downtown Vancouver at the time. But neither the Owner nor s.22(1) provided evidence of what was agreed or paid earlier (or after 2020).
- (h) Presumably such evidence was available – whether through the Owner's tax filings, bank statements, emails, text messages or other documents. The Owner's evidence did include an email from his accountant, indicating that use of emails for some purposes did occur.
- (i) s.22(1) says that s.22(1) paid the BC Hydro bills. That statement hangs in the air and leaves out who was paying other bills (e.g., Strata Corporation common area fees, cablevision, internet, parking). The Owner's tax filing shows expenses against the \$7200 in rental income of \$4,701.96 for Maintenance and Repairs and \$2,232.65 for Property Taxes. Nothing is set out for BC Hydro or other bills.

The Review Officer's notes about online searches concerning s.22(1) compound these difficulties with the evidence. The fact that s.22(1) was noted as having ties to a number of other addresses, including a rental property, reinforces the view that the Owner's claim for an exemption is neither credible nor reliable.

Comparing the May 2022 Affidavit of s.22(1) with the March 30, 2022 letter from him addressed to the City of Vancouver displays further inconsistencies. For example, in the letter he says he had been a tenant of the property since 2010, but the original tenancy agreement had expired and he was thereafter on a month-to-month tenancy. That is not repeated in the Affidavit.

There is also a minor inconsistency in dates in that he says 2010, but the Form K refers to January 18, 2011. The larger issue, of course, is whether it is really a residential tenancy is "occupied for residential purposes."

Further, in s.22(1) letter, he writes,

“Due to Covid 19, s.22(1) and because my landlord is also a s.22(1), we agreed to a monthly payment of \$600 per month usually paid in cash for the use of the one bedroom in the suite.”

The COVID emergency was declared in March 2020 and s.22(1) would not have seen s.22(1). The reference to being a s.22(1) of the Owner is also put forward. Both of those are suggested as reasons for paying only \$600 per month and doing so in “cash”. He does not say what the payments were supposed to be early in 2020 or in the year prior to him and the landlord agreeing on \$600 per month. He does not say what they were after 2020.

The Affidavit puts things differently from the letter. He swears that he rented s.22(1), Vancouver, BC. For all of 2020, for \$600 a month, which I paid in cash.” But, on his evidence, the agreement to pay that monthly rent was not reached until several months into 2020. In his letter, he does not call the payment “rent.” He calls it a “payment”. Finally, the payment is “for the use of the one bedroom in the suite.” That is an odd way of describing renting something as a residential tenancy. It sounds more like use of a room as would occur in a hotel or Air BnB. And, at the risk of repetition, the phrase “for the use of the one bedroom in the suite” in the letter differs from saying in he rented the whole unit in the Affidavit.

The Auditor and the Review Officer reviewed all this in detail and noted many more points where the evidence and information put forward failed to meet the burden of proof. Doing so would require adequate, credible and reliable evidence. That simply did not happen here. As a result, the Owner failed to meet the burden of proving entitlement to claim the exemption from the Vacancy Tax.

There were thus ample reasons for both the Auditor’s and the Vacancy Tax Review Officer’s skepticism about whether this was truly a residential tenancy involving the Property. The Owner failed to deal with those and to provide sufficient evidence to meet the burden of proof on him and establish that an exemption applied to relieve him and the Property of the Vacancy Tax.

O’Halloran, J.A., in the oft-cited B.C. Court of Appeal decision in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, explains how an evaluation of the credibility of evidence given by interested parties should be made:

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

Winteringham, J., referred to that passage in her decision in *Latif v Nair*, 2024 BCSC 398 at para. 51. There, she dealt with a case where one party alleged an agreement to sell property at a certain price, but the other denied there was certainty about the terms. She noted the plaintiff bore the burden of proof. She reviewed different components of the claim and the evidence.

At para. 130, she commented that, “First, and despite the plaintiffs’ position throughout the proceedings that the parties agreed on price, property and parties, I am not so convinced.” After reviewing inconsistencies and oddities about the evidence, she concluded that the plaintiff had failed to prove agreement as to the price.

Next, at para. 148, she says “The plaintiffs have not sufficiently demonstrated that a *consensus ad idem* was reached amongst the parties.” She addressed whether the payment of money said to be a deposit allayed concerns whether there was a contract, but found they did not. Payments did not cure the underlying flaws in the plaintiff’s case about whether there was a contract or not.

At para. 150, she finds that “the plaintiffs’ payment of the deposits to him did not resolve any uncertainties in respect of terms of the transaction. To this extent, this case is similar to others where the payment of the deposits did not resolve uncertainties in contractual relations.”

Those points echo concerns in this case. For example, there is no written agreement in evidence here, allegedly because it was lost. Even if their suggestion that it was lost were true, however, the Owner and s.22(1) must have some recollection or documents to show what the terms were. Neither the Owner nor s.22(1) spell out in any detail what the terms were that it contained. Neither set out what the rent payable in 2010 or 2011 was and whether and when it was increased. Neither say how and whether any of that was ever paid. No cheques were produced. No bank statements showing deposits were either.

The nature of the alleged tenancy is unclear about whether the whole or just part (and if so, what parts) of the Property were leased. Its nature as to the use of the Property is unclear as well – including whether it was for office space, temporary accommodation or use by others. Aside from what was described for 2020, the rent amounts are unclear and whether rent was actually paid is as well. The amount for 2020 is called an “arrangement”. It was allegedly handled on an all-cash basis, but no one has any evidence when payments were made and no deposits to a bank account of the money paid have been produced. The Panel could go on, but the point is made. The Owner has not fulfilled the burden of showing on a balance of probabilities that the exemption applies.

The Owner’s arguments set out in his March 13, 2023 email requesting this review do not assist in addressing any of these concerns.

The Supreme Court of Canada recently reiterated in *R. v. Kruk*, 2024 SCC 7 that evaluating credibility and reliability is grounded in common sense:

- “It is widely recognized that testimonial assessment *requires* triers of fact to rely on common-sense assumptions about the evidence.” (para 72);
- “...common-sense assumptions necessarily underlie *all* credibility and reliability assessments. Credibility can only be assessed against a general understanding of “the way things can and do happen”; it is by applying common sense and generalizing based on their

accumulated knowledge about human behaviour that trial judges assess whether a narrative is plausible or “inherently improbable” (para. 73);

- “Common sense underpins well-established principles guiding credibility assessment — including the now-universal idea that witnesses who are inconsistent are less likely to be telling the truth — and assists in assessing the scope and impact of particular inconsistencies. Reliability also requires reference to common-sense assumptions about how witnesses perceive, remember, and relay information, invoking generalizations about how individuals tend to present information that they are remembering accurately and completely, as opposed to matters about which they are unsure or mistaken. A trial judge may, for example, infer that a witness was credible yet unreliable because they appeared sincere but displayed indicia that tend to suggest an unclear or uncertain memory (e.g., equivocation, phrases such as “hmm . . . let me see”, long pauses, or failure to provide much detail). (para. 74).

Finally, in their footnote 4, the court set out factors on which credibility and reliability determinations are properly made:

Credibility assessments engage factors such as: the internal consistency and coherence of the witness’s testimony and the incidence of inconsistencies with prior statements, especially those made under oath; consistency with other accepted facts and probable circumstances; the plausibility of the narrative presented by the testimony; evidence of a motive to fabricate); and demeanour, though courts should not rely exclusively on this consideration and should be conservative in according it weight Reliability assessments engage factors such as: the conditions under which the witness made the material observations; the level of detail in their testimony; the amount of time that elapsed between the observations and the testimony; and whether any intervening factors may have tainted the witness’s memory, discussing reliability in relation to eyewitness identifications).

Some of those considerations are inapplicable here (e.g., this was not a trial with witness testimony given in person where a direct evaluation of demeanour and the manner and delivery of spoken evidence can be made), but many are and reflect the importance of carefully reviewing the evidence in context and as a whole.

In the present case, the Owner’s failure to make a correct and truthful declaration in first instance, the vagueness and inconsistencies in what evidence was provided thereafter, and the failure to provide full responses and documentation when requested all weigh against the claim for an exemption. Further, the story eventually settled upon by the Owner (the alleged tenancy of **s.22(1)**) cannot be said to be in harmony with the preponderance of probabilities here.

As noted earlier, the Auditor’s determination letter rejected the Owner’s claim that the Property was exempt from tax as a rented property and the Review Officer’s determination letter rejected the claim that the Property was shown to be a principal residence. The Owner’s request for review by this Panel seems to focus just on the tenancy claim as a basis for exemption. But whether that is the only one or

File Number: RC-2023-00005

not, in the Panel's view there was insufficient credible and reliable evidence to prove that either of the grounds claimed before the Auditor or the Review Officer was a proper basis for exemption from the Vacancy Tax.

Further, there remains section 7.1 to consider. It provides that the Property is deemed to be vacant and subject to the tax where one or another of the listed factors quoted above are present. Section 7.1(b) and (c) apply here. The initial property declaration was false. There was a failure on multiple fronts to provide information requested. It is unnecessary to reach a conclusion on the application of section 7.1, however, given the other findings that, on the evidence, the exemptions claimed do not apply.

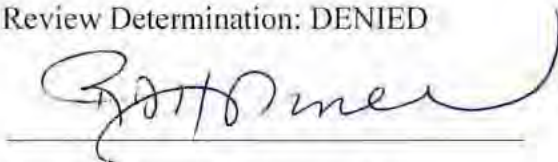
Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the Owner is entitled to an exemption from taxation under the Bylaw.

The Owner's initial declaration that the Property was exempt based on the principal residence exemption was false. The inconsistencies and changing positions in the information and documents provided in response to requests from the Auditor and the Vacancy Tax Review Officer undermine both claimed exemptions. The failure to provide some of the requested documents and information does so as well. Overall, the Panel is left with the view that the Owner has failed to provide adequate, reliable and credible evidence supporting the exemptions claimed.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax should be imposed on the above noted property.

Review Determination: DENIED

A handwritten signature in black ink, appearing to read "R. Holmes", is written over a horizontal line.

Panel: Robert D. Holmes, K.C.

Date: April 12, 2024

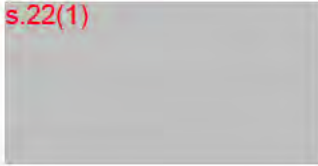


Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00091

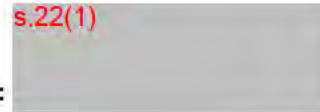
Vacancy Reference Period: 2018

Folio:

s.22(1)

Civic

Address:



At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for the Principal Residence property status claimed pursuant to Section 2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In order to meet the requirements set out in Section 2 of the Bylaw, a property must have served as the principal residence of an owner or permitted occupant for at least 180 days within the vacancy reference period. "Principal Residence" is defined as:

... the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence

In our view the documentation regarding the homeowners' mortgage and federal government benefits provided by the homeowners would, in ordinary circumstances, demonstrate a likelihood that the property in question was the principal residence of the homeowner PP for the necessary 180 day period during the reference year 2018.

However, we agree with the Review Officer's determination that the history of this property, as outlined by the Review Officer, provides good grounds to consider the file to be "high risk" and therefore worthy of a more critical inspection. We note that we decline to consider the "Lagan" history of s.22(1)

s.22(1) But, a City of Vancouver representative attended at the property in November 2018 and report that the yard was overgrown, the house was dilapidated and vacant, the back stairs had collapsed and a utility box was dangling on the side of the building. Additionally, the homeowner(s) were asked to supply evidence regarding insurance and Canada Revenue Agency documentation relating to the alleged resident, the homeowner PP, yet failed to do so. This is documentation listed in s. 4.9 of the Bylaw and although note cited directly by the audit report or the City's reviewing officer as a reason, can cause the property to be deemed taxable under s. 7.1 of the Bylaw.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property in question meets the requirements set out in Section 2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and S. Rose
Vacancy Tax Review Panel
14th September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 15, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00095

Vacancy Reference Period: 2020

Folio: s.22(1)

Civic

Address:



The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the Principal Residence property status claimed pursuant to Section 2 of the Bylaw and that the property DOES NOT qualify for the PRINCIPAL RESIDENCE - OWNER status pursuant claimed pursuant to section 2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In order to meet the requirements set out in Section 2 of the Bylaw, a property must have served as the principal residence of an owner or permitted occupant for at least 180 days within the vacancy reference period.

In the course of its review, the Panel notes that this property was declared vacant for the 2017, 2018, and 2019 reference periods. In respect of the 2020 reference period now under review, the Panel further notes the owner's concession that the property was vacant for more than 180 days during the reference period. However, the owner is claiming exemption from Section 2 requirements based upon a described intent to move into the property as her principal residence in June of 2020. The owner explains that she was prevented from doing so due to COVID-related travel restrictions imposed at the time s.22(1)

Alongside her submission of several items of documentation s.22(1) the owner has argued that it was her intent to move into the property at a point in time which would have resulted in her occupying the property as her principal residence for more than 180 days within the reference period. The owner argues that exemption from the Vacancy Tax should be granted in this case, due to described circumstances.

Having carefully considered all evidence submitted in this case, the Panel finds that same evidence is neither effective nor compelling in leading the Panel to a reasoned determination that the subject property has met Section 2 requirements in this case.

In considering the governing Bylaw wording, the Panel also notes that the Bylaw does not contemplate either an individual's intent or circumstances (foreseen or unforeseen) bearing upon either occupancy or principal residence of a property. Rather, the Bylaw strictly contemplates whether a property did, or did not, serve as an owner or occupier's principal residence for at least 180 days within the reference period in question.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property in question meets the requirements set out in Section 2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

S. Rose and G. Molnar
Vacancy Tax Review Panel
14th September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 15, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00096
Vacancy Reference Period: 2019

Folio:
Civic
Address:

s.22(1)

At the request of the involved property owner, the Vacancy Tax Review Panel was asked to conduct an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the dispute has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Panel determines that the property DOES NOT qualify for the exemption from taxation under s. 3.2(a) of the Vacancy Tax Bylaw as a property vacant in order to redevelop or safely carry out major renovations to it and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

It is not disputed but that the property was uninhabited during the reference period 2019 and therefore, at first blush, subject to taxation. In order to meet the requirements for exemption from taxation set out in s. 3.2(a) it must be shown: a) a permit for the redevelopment or renovation has been issued by the City, and b) the work is being carried out in diligent manner, without unnecessary delay, according to the City's Chief Building Inspector.

The homeowner has not satisfied the exemption requirements of s. 3.2(a). No permit has been issued that would capture any portion of the reference year 2019. There is evidence that the homeowner applied for a renovation permit in August 2018 but it was never "issued," a status specifically required by s. 3.2(a). Indeed, even if it had been issued, it appears to have been cancelled January 25, 2019; twenty five days into the start of the pertinent reference period and so could not serve to found a claim of exemption for any portion of the remainder of the reference period.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property was exempt from taxation during the reference period.

The Panel has also considered the intention of the Bylaw, which is to promote the return of vacant and under-utilized residential properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside our analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and S. Rose
Vacancy Tax Review Panel
14th September, 2022
ADR Institute of BC

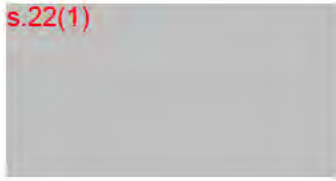


Vacancy Tax Review Panel

Sep 15, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00099

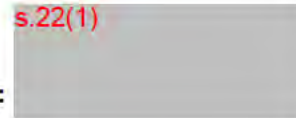
Vacancy Reference Period: 2017

Folio:

s.22(1)

Civic

Address:



The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the TENANTED property status claimed pursuant to Section 2 of the Bylaw and that there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In order to meet the requirements set out in Section 2 of the Bylaw, a property must:

- have served as the principal residence of an occupier for at least six months within the reference period or;
- have been occupied for residential purposes by an arm's length tenant under a tenancy agreement, or by an arm's length subtenant under a sublease agreement, for a term of at least 30 consecutive days.

In the course of its review, the Panel has taken note of the owner's evidence and argument suggesting that the property was tenanted in compliance with above Section 2 requirements, for the 2017 reference period. On review of the owner's evidence submitted, the Panel notes that there was no primary evidence provided by the owner, such as a signed Residential Tenancy Agreement. The Panel further notes that there was secondary evidence submitted in the form of a homeowner's policy that does feature a tenancy clause and a B.C. Hydro bill that is in the name of the claimed tenant.

With a view to securing additional evidence from the homeowner, the City requested additional evidence in the form of an RTA and a third party consent form signed by the claimed tenant. Despite saying that they would provide additional documents, the owner did not submit anything further. The Panel is therefore left to make a determination on this file based upon secondary evidence only.

While the Panel acknowledges that there is some secondary evidence that aligns with the owner's claim that the property was occupied by a tenant during 2017, this evidence falls short of satisfying the Panel on a balance of probabilities that the property was occupied by a tenant or subtenant for more than 180 days, and for a term of at least 30 consecutive days.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property in question meets the requirements set out in Section 2 of the Bylaw in respect of occupancy by a tenant.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

S. Rose and G. Molnar
Vacancy Tax Review Panel
14th September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00100

Vacancy Reference Period: 2020

Folio:

s.22(1)

Civic

Address:



At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for exempt property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

The material filed makes it clear that the rental property in question became vacant in early 2020 and was not tenanted again during that year. The property owner's representative notes that in his view the fact of the COVID pandemic coupled with the large "under redevelopment" sign the City required to be posted at the front of the property, served to ward off prospective tenants. It was decided to renovate the unit, though no permits were sought or obtained to do so.

In order to achieve the exemption from taxation permitted by s. 3.2 of the Bylaw the owner of property vacant for more than 180 days during the reference period 2020 must show that the vacancy was in order to redevelop or safely carry out major renovations; a) for which permits have been issued by the City, and b) which in the opinion of the Chief Building Official or delegate are being carried out diligently and without unnecessary delay.

In this case the corporate property owner through its representative shows that it had applied for a development permit in September 2019, ultimately issued in September 2021. A development permit does not authorize major demolition or construction work that would preclude occupancy for six months or more. The mere application for a development permit may justify exemption from taxation under s. 3.2(c) of the Bylaw but this was not "property that is unimproved with any dwelling units" as required by that subsection.

The property owner did not have an issued permit to redevelop or carry out major renovations through any portion of the reference period 2020.

In result, the property owner has not brought itself with the exemption permitted under s. 3.2. To accede to the argument that the COVID pandemic and the spectre of redevelopment thwarted the search for replacement tenants would be to exercise a power not granted to the Panel by the Bylaw.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a determination that the property in question meets the requirements for exemption from taxation set out in Section 3.2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
16th September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00101

Vacancy Reference Period: 2020

Folio: s.22(1)

Civic

Address:



At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for exempt property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

The material filed makes it clear that the rental property in question became vacant in early 2020 and was not tenanted again during that year. The property owner's representative notes that in his view the fact of the COVID pandemic coupled with the large "under redevelopment" sign the City required to be posted at the front of the property, served to ward off prospective tenants. It was decided to renovate the unit, though no permits were sought or obtained to do so.

In order to achieve the exemption from taxation permitted by s. 3.2 of the Bylaw the owner of property vacant for more than 180 days during the reference period 2020 must show that the vacancy was in order to redevelop or safely carry out major renovations; a) for which permits have been issued by the City, and b) which in the opinion of the Chief Building Official or delegate are being carried out diligently and without unnecessary delay.

In this case the corporate property owner through its representative shows that it had applied for a development permit in September 2019, ultimately issued in September 2021. A development permit does not authorize major demolition or construction work that would preclude occupancy for six months or more. The mere application for a development permit may justify exemption from taxation under s. 3.2(c) of the Bylaw but this was not "property that is unimproved with any dwelling units" as required by that subsection.

The property owner did not have an issued permit to redevelop or carry out major renovations through any portion of the reference period 2020.

In result, the property owner has not brought itself within the exemption permitted under s. 3.2. To accede to the argument that the COVID pandemic and the spectre of redevelopment thwarted the search for replacement tenants would be to exercise a power not granted to the Panel by the Bylaw.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a determination that the property in question meets the requirements for exemption from taxation set out in Section 3.2 of the Bylaw.

The Panel has also considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
16th September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00102

Vacancy Reference Period: 2020

Folio: s.22(1)

Civic

Address:



At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for exempt property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

The material filed makes it clear that the rental property in question, Unit #7 at 3495 west 4th, became vacant in early 2020 and was not tenanted again during that year. The property owner's representative notes that in his view the fact of the COVID pandemic coupled with the large "under redevelopment" sign the City required to be posted at the front of the property, served to ward off prospective tenants. It was decided to renovate the unit, though no permits were sought or obtained to do so.

In order to achieve the exemption from taxation permitted by Section 3.2 of the Bylaw the owner of property vacant for more than 180 days during the reference period 2020 must show that the vacancy was in order to redevelop or safely carry out major renovations; a) for which permits have been issued by the City, and b) which in the opinion of the Chief Building Official or delegate are being carried out diligently and without unnecessary delay.

In this case the corporate property owner through its representative shows that it had applied for a development permit in September 2019, ultimately issued in September 2021. A development permit does not authorize major demolition or construction work that would preclude occupancy for six months or more. The mere application for a development permit may justify exemption from taxation under Section 3.2(c) of the Bylaw but this was not "property that is unimproved with any dwelling units" as required by that subsection.

The property owner did not have an issued permit to redevelop or carry out major renovations through any portion of the reference period 2020.

In result, the property owner has not brought itself with the exemption permitted under Section 3.2. To accede to the argument that the COVID pandemic and the spectre of redevelopment thwarted the search for replacement tenants would be to exercise a power not granted to the Panel by the Bylaw.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a determination that the property in question meets the requirements for exemption from taxation set out in Section 3.2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
16th September, 2022
ADR Institute of BC

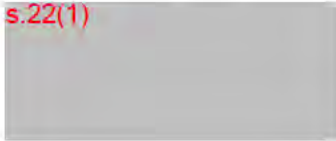


Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00103

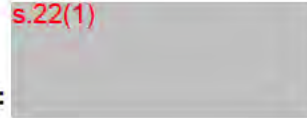
Vacancy Reference Period: 2020

Folio:

Civic

Address:

s.22(1)



At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for exempt property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

The material filed makes it clear that the rental property in question became vacant in early 2020 and was not tenanted again during that year. The property owner's representative notes that in his view the fact of the COVID pandemic coupled with the large "under redevelopment" sign the City required to be posted at the front of the property, served to ward off prospective tenants. It was decided to renovate the unit, though no permits were sought or obtained to do so.

In order to achieve the exemption from taxation permitted by s. 3.2 of the Bylaw the owner of property vacant for more than 180 days during the reference period 2020 must show that the vacancy was in order to redevelop or safely carry out major renovations; a) for which permits have been issued by the City, and b) which in the opinion of the Chief Building Official or delegate are being carried out diligently and without unnecessary delay.

In this case the corporate property owner through its representative shows that it had applied for a development permit in September 2019, ultimately issued in September 2021. A development permit does not authorize major demolition or construction work that would preclude occupancy for six months or more. The mere application for a development permit may justify exemption from taxation under s. 3.2(c) of the Bylaw but this was not "property that is unimproved with any dwelling units" as required by that subsection.

The property owner did not have an issued permit to redevelop or carry out major renovations through any portion of the reference period 2020.

In result, the property owner has not brought itself within the exemption permitted under s. 3.2. To accede to the argument that the COVID pandemic and the spectre of redevelopment thwarted the search for replacement tenants would be to exercise a power not granted to the Panel by the Bylaw.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a determination that the property in question meets the requirements for exemption from taxation set out in Section 3.2 of the Bylaw.

The Panel has also considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
16th September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00105

Vacancy Reference Period: 2019

Folio: s.22(1)

Civic

Address:



At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for the Principal Residence - Homeowner property status claimed pursuant to Section 2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In order to meet the requirements set out in Section 2 of the Bylaw, a property must have served as the principal residence of an owner or permitted occupant for at least 180 days within the 2019 vacancy reference period. In accordance with the Bylaw, a principal residence is defined as:

"...the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills"

It is incumbent on the property owner to show, by the provision of documents, that the person claimed to be using the residence as a principal residence was paying bills and receiving mail at that address as well as using the address as his or her address for a variety of other general relationships like insurance, taxation, utility bills and the like. A single piece of documentation was provided by the property owner: a BC Driver's License, however, it did not list the address in question and therefore cannot be considered as primary evidence in order to support principal residence. Thus the property was "unoccupied" within the meaning of the Bylaw for more than 180 days during the reference period and therefore "vacant."

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property in question meets the requirements set out in Sections 2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

B. Hamilton and G. Molnar
Vacancy Tax Review Panel
16th September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00108
Vacancy Reference Period: 2020

Folio: s.22(1)
Civic
Address:

At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel has determined that the property DOES NOT qualify for exemption for Property Undergoing Redevelopment or Major Renovations, pursuant to Section 3.2 of the Bylaw, and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In order to meet the exemption requirements set out in Section 3.2 of the Bylaw, it must be shown that the undisputed vacancy of this property for more than 180 days during the vacancy reference period of 2020 was because the property was undergoing redevelopment for major renovations; a) for which permits have been issued by the City, and b) which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

The property owner's representative has provided documentation to support a minor renovation which occurred during the vacancy reference period in question, however, due to its limited scope, permits were not required and therefore the exemption for Property Undergoing Redevelopment or Major Renovations does not apply.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under section 3.2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
21st September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00111

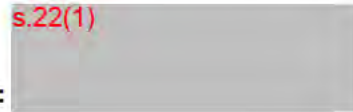
Vacancy Reference Period: 2017

Folio:

s.22(1)

Civic

Address:



At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication process, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES qualify for the Principal Residence property status claimed pursuant to Section 2 of the Bylaw and that there WAS an error made by the City's Review Officer in applying the Bylaw.

In this case the property owners initially failed to provide sufficient documentation to establish principal residency with the terms of the Bylaw, which defines "principal residence" as:

... the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation, related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence.

Since this matter was reviewed by the City, the property owners have submitted additional documentation in the form of a Notice of Assessment and Notice of Re-assessment from the Canada Revenue Agency, mailed in May and November 2017 respectively and addressed to the property in question.

This documentation, when combined with the utility bill, dental bill and cable bill evidence provided by the property owner, is sufficient to establish that the property was the principal residence of at least one of the property owners during the reference year of 2017.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the property in question meets the requirements set out in Section 2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD NOT be imposed on the property.

Review Determination: ACCEPTED. The Vacancy Tax Notice for the 2017 reference year is rescinded.

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
21st September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 15, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00114

Vacancy Reference Period: 2019

Folio: s.22(1)

Civic

Address:



The Vacancy Tax Review Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the TENANTED property status claimed pursuant to Section 2 of the Bylaw and that there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In order to meet the requirements set out in Section 2 of the Bylaw, a property must:

- have served as the principal residence of an occupier for at least six months within the reference period or;
- have been occupied for residential purposes by an arm's length tenant under a tenancy agreement, or by an arm's length subtenant under a sublease agreement, for a term of at least 30 consecutive days.

In the course of its review, the Panel has taken note of the owner's evidence and argument suggesting that the property was tenanted in compliance with above Section 2 requirements, for the 2019 reference period. On review of the owner's evidence comprised of several documents, the Panel further notes that the claimed tenants s.22(1) The Panel's prima facie finding is that such described tenancy is not arm's length as stipulated in the Bylaw. Drawing upon this finding, the Panel has gone on to consider that a tenancy involving family relationships can still be considered arms-length if there is evidence that the Parties had treated the tenancy as arms-length (eg: the drafting and perfected execution of a Residential Tenancy Agreement, fair market value rental rate as consideration, etc.) . However, the Panel finds no compelling evidence in this case that the Parties treated the described tenancy as arms-length throughout material times. The Panel therefore rejects the owner's argument that the property was occupied by an arm's length tenant for the minimum duration of time within the 2019 reference period.

Prior to reaching a determination, the Panel has also carefully considered possible alternative exemptions in this case, including the question of an owner's principal residence pursuant to Section 2 and also occupancy for full time work pursuant to Section 3.2. On a preponderance of the evidence submitted, the Panel finds no compelling basis for a finding in the owner's favour attached to these alternative exemptions.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property in question meets the requirements set out in Section 2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

S. Rose and G. Molnar
Vacancy Tax Review Panel
14th September, 2022



Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00115
Vacancy Reference Period: 2020

Folio: s.22(1)
Civic
Address:

At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for the exemption claimed pursuant to Section 3.2 of the Bylaw for "Property Undergoing Redevelopment or Major Renovations" and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In order to meet the exemption requirements set out in Section 3.2 of the Bylaw, it must be shown that the undisputed vacancy of this property for more than 180 days during the vacancy reference period of 2020 was because (b) the property was undergoing redevelopment or initial development of residential property that is unimproved with any dwelling units, or the rehabilitation and conservation of heritage property: i) for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City, and ii) which, in the opinion of the Director of Development Services, is being diligently pursued and without unnecessary delay.

Given the previous dwelling on the property in question was demolished in March 2019, completing permit DB-2018-05143 and no subsequent development permit applications have been made, the exemption for Property Undergoing Redevelopment or Major Renovations does not apply.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under section 3.2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
21st September, 2022



Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00116
Vacancy Reference Period: 2020

Folio: s.22(1)
Civic
Address:

At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for the exemption claimed pursuant to Section 3.2 of the Bylaw for "Property Undergoing Redevelopment or Major Renovations" and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In order to meet the exemption requirements set out in Section 3.2 of the Bylaw, it must be shown that the undisputed vacancy of this property for more than 180 days during the vacancy reference period of 2020 was because (b) the property was undergoing redevelopment or initial development of residential property that is unimproved with any dwelling units, or the rehabilitation and conservation of heritage property: i) for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City, and ii) which, in the opinion of the Director of Development Services, is being diligently pursued and without unnecessary delay.

Given the previous dwelling on the property in question was demolished in March 2019, completing permit DB-2018-05143 and no subsequent development permit applications have been made, the exemption for Property Undergoing Redevelopment or Major Renovations does not apply.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under section 3.2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
21st September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2022-00001

Vacancy Reference Period: 2020

Folio:

Civic

Address:

s.22(1)



At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Review Panel has determined that the property DOES NOT qualify for the exemption claimed pursuant to s. 3.6 of the Bylaw for “Occupancy for full-time employment” and there WAS NOT any error made by the City’s Review Officer in applying the Bylaw.

In order to meet the exemption requirements set out in Section 3.6 it must show the residential property was occupied by the registered owner for residential purposes for a minimum aggregate of six months, during the reference period (in this case the year 2020), because the registered owner was s.22(1) and the s.22(1) City.

In this case it is not disputed that the property, work accommodation, was unoccupied for more than six months during the reference period 2020. The property owner submits that the COVID pandemic and resultant public health guidance cause him to decide that it was not critical for him to travel to the work accommodation in question and, additionally, s.22(1)

It is the Review Panel’s view the evidence shows that the nature of the property owner’s s.22(1) and as a result, the availability of the s. 3.6 as an exemption from the taxation of vacant property was lost.

In regard to the matter of the pandemic and resulting health concerns, the Panel acknowledges the property owner’s circumstances but notes the Bylaw has no provision to accommodate persons in such circumstances.

The Review Panel notes that it has been submitted that this property was transferred in May 2021 and so the new owner should not be subject to tax imposed for the reference period 2020. The Review Panel cannot accede to that suggestion. Section 2.9 of the Bylaw is clear, making the tax a levy, collected as real property taxes. It is not a tax against any particular owner.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Review Panel’s final determination that the property is NOT exempt from taxation.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
21 September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)

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File Number: RC-2022-00003

Vacancy Reference Period: 2019

Folio: s.22(1)

Civic

Address:

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At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication process, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Review Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for the Principal Residence property status claimed pursuant to Section 2 of the Bylaw and that there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In this case the property owner failed to provide sufficient documentation to establish principal residency within the terms of the Bylaw, which defines "principal residence" as:

... the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation, related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence.

Although the Bylaw does not prohibit s.22(1), the property owner has failed to provide primary or secondary evidence to support the declaration of Principal Residence - Homeowner, at the property in question, as he has indicated that his mail is addressed s.22(1), which was declared as the s.22(1) s.22(1). The property owner indicates this decision relates to having mail stolen from the property in question, as well as eligibility for a residential parking permit connected to the s.22(1) s.22(1) address, however neither reason negates the criteria set out in the Bylaw.

Further consideration has also been given to an audit completed in relation to a Short Term Rental License, which was ultimately declined after determining that the property in question was not the homeowner's principal residence. As a result, all rentals must long term (30 days or greater) in order for the property to be considered occupied under the Vacancy Tax Bylaw. Accordingly, the panel has also considered whether the property in question might be exempt because it was tenanted for periods of 30 or more consecutive days, for at least six months of the vacancy reference period, however there is no evidence to support this status either.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Review Panel's final determination that the property in question does not meet the requirements set out in Section 2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
21st September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2022-00010
Vacancy Reference Period: 2019

Folio: s.22(1)
Civic
Address:

At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for tenanted status claimed pursuant to Section 2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

No evidence was provided by the property owner to support that the property was rented out and occupied by a tenant or subtenant for residential purposes in periods of 30 or more consecutive days, for a least six months of the 2019 vacancy reference period.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the property in question does not meet the requirements for exemption from taxation set out in Section 2 of the Bylaw.

The Panel has also considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
21st September, 2022



Vacancy Tax Review Panel

Sep 28, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2022-00011
Vacancy Reference Period: 2019

Folio: s.22(1)
Civic
Address:

At the request of a property owner the Review Panel conducted an independent adjudicative review of this matter. In accordance with Review Panel Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES qualify for the Principal Residence property status claimed pursuant to Section 2 of the Bylaw and, as explained below, there WAS an error made by the City's Review Officer in applying the Bylaw.

Since applying for this review the property owner has provided substantial documentation not previously made available to the City or the reviewing officer below. A review officer has again considered the matter and submits that had the documents been made available at the internal review state they would have satisfactorily established that the property was the principal residence of the homeowner and thus not taxable.

After review of the new material the Panel agrees. The CRA, ICBC BC Hydro material and sundry letters establish that the property was the applicant's principal residence during the reference period 2019.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality meets the requirements set out in Section 2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD NOT be imposed on the property.

Review Determination: ACCEPTED. The vacancy tax notice is rescinded.

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
27th September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 28, 2022

CONFIDENTIAL

s.22(1)

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File Number: RC-2022-00013

Vacancy Reference Period: 2020

Folio:

s.22(1)

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Civic

Address:

At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for exemption for Property Undergoing Redevelopment or Major Renovations, pursuant to Section 3.2 of the Bylaw, and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In order to meet the exemption requirements set out in Section 3.2 of the Bylaw, it must be shown that the undisputed vacancy of this property for more than 180 days during the vacancy reference period of 2020 was because the property was undergoing redevelopment for major renovations; a) for which permits have been issued by the City, and b) which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

Given, however, in this particular circumstance, the Elevating Devices Installation Permits issued on February 2, 2020, were to the Strata, in order to complete upgrades to three (3) elevators in a shared building, and the property owner has provided documentation to support the elevator upgrades were completed one at a time, so as not to limit access to the upper floors of the building, the exemption for Property Undergoing Redevelopment or Major Renovations does not apply.

Furthermore, the Bylaw does not give consideration to extenuating circumstances, such as the COVID-19 Pandemic, and therefore, despite the numerous 'unnecessary travel' restrictions in place by s.22(1), the property is still considered to be a 'second home' by the Review Panel, and thus ineligible for any exemptions.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under section 3.2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
27th September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 28, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2022-00016

Vacancy Reference Period: 2019

Folio:

Civic

Address:

s.22(1)



At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Panel Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Panel has determined that the property DOES NOT qualify for the "Property undergoing redevelopment or renovation" exemption provided by s. 3.2(a) of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In order to meet the requirements set out in s. 3.2(a), a property owner must establish that the admitted vacancy of the property in excess of 180 days was in order to develop or safely carry out major renovations to the property a) for which permits have been issued, and b) which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay.

A building permit was issued in October 2018 and expired in May 2020 (a second permit, relating to a "laneway home" was also issued but is not relevant to occupancy of the home on the property). According to the permit wording, that permit was "to permit exterior and interior alterations to add additions (roughly 4100 square feet) to east side and rear to this existing single family dwelling..."

The property owner submits that he initially intended on rebuilding the home but decided instead to repair it. The property owner has submitted solid evidence to show that some significant repairs and renovations were undertaken during the reference year 2019. However, that work did not relate to the work described in the previously issued permit.

It is not disputed but that the work for which the permit was issued was not done. Indeed, the Chief Building Official indicates that none of the work was done, no inspections ever called for and that the permit ultimately expired.

As a result, the property owner has failed to establish either that the work was work for which a permit had been issued or that in the opinion of the Chief Building Official it was being carried on diligently and without unnecessary delay.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property in question meets the exemption requirements set out in Section 3.2 (a) of the Bylaw.

?

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
27th September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 28, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2022-00019
Vacancy Reference Period: 2019

Folio: s.22(1)
Civic
Address:

At the request of a property owner the Review Panel conducted an independent adjudicative review of this matter. In accordance with Review Panel Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES qualify for the Principal Residence property status claimed pursuant to Section 2 of the Bylaw and, as explained below, there WAS an error made by the City's Review Officer in applying the Bylaw.

Since applying for this review the property owner has provided substantial documentation not previously made available to the City. A review officer has again considered the matter and submits that had the documents been made available at the internal review state, they would have satisfactorily established that the property was the principal residence of the homeowner and thus not taxable.

After review of the new material the Panel agrees. The CRA, CIBC, ICBC, MSP, and BC Hydro documentation establish that the property was the applicant's principal residence during the reference period 2019.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality meets the requirements set out in Section 2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD NOT be imposed on the property.

Review Determination: ACCEPTED. The vacancy tax notice is rescinded.

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
27th September, 2022
ADR Institute of BC

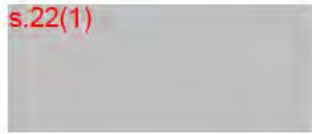


Vacancy Tax Review Panel

Sep 28, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2022-00020

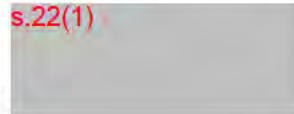
Vacancy Reference Period: 2020

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s.22(1)

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Address:



At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for exemption for Property Undergoing Redevelopment or Major Renovations, pursuant to Section 3.2 of the Bylaw, and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In order to meet the exemption requirements set out in Section 3.2(b) of the Bylaw, it must be shown that the residential property was unoccupied for more than six months during the 2019 vacancy reference period in order to carry out either redevelopment or initial development of residential property that is unimproved with any dwelling units, or the rehabilitation and conservation of heritage property: i. for which complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City.

In this particular circumstance, the property owner and the various professionals they have contracted on their behalf to pursue the goal of a higher-density rental property development, have been working towards that goal since 2012. Unfortunately, despite various iterations of multi-family dwellings and townhouses, the property owner has not submitted a rezoning enquiry or application, or a development application, pertaining to the 2020 vacancy reference period, and therefore the property does not qualify for the Property Undergoing Redevelopment or Major Renovations exemption.

Based on the documentary evidence provided, including communication with the Deputy Director of Planning, it is apparent that the property owner was waiting for 'the Vancouver Plan,' as the previous (2014) Marpole Community Plan did not enable the rezoning policy. However, the Vacancy Tax Bylaw, despite its objective to return empty or under-used properties to use as rental homes for people who live and work in Vancouver, does not give consideration to those seeking to pursue increased density outside of existing residential zoning districts and outside of the current mechanisms and processes for rezoning.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under section 3.2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
27th September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 28, 2022

CONFIDENTIAL

s.22(1)

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File Number: RC-2022-00021

Vacancy Reference Period: 2021

Folio:

s.22(1)

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Address:

At the request of a property owner the Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Review Panel Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Panel has determined that the property DOES NOT qualify as the “principal residence of an occupier” claimed pursuant to Section 2 of the Bylaw and, as explained below, there WAS NOT an error made by the City’s Review Officer in applying the Bylaw.

The property owner describes the difficulties encountered during the vacancy reference period in attempting to relocate her principal residence to her new home in the City. She was thwarted first by COVID’s strangulation s.22(1) and then s.22(1) s.22(1)

The terms of the Bylaw are, however, strict. There is no provision for the consideration of hardship or of unforeseen circumstances preventing occupancy. There is no claim that s. 3.3 “Property owner in care” applies to these circumstances. In the eyes of the Bylaw the property was vacant for more than six months in during the vacancy reference period and was taxable.

The property owner raised the possibility that she was exempt from taxation under the “Limited use of residential property” provisions in s. 3.8 of the Bylaw, perhaps based on the two month “limited use” of the residence s.22(1) Section 3.8 provides an exemption from taxation where the vacancy results from, a) the lawful use of property being limited to vehicle parking, or b) as a result of the size, shape or other inherent limitation of the parcel, a residential building cannot be constructed on the lot. No supporting evidence was provided to show that only parking was permitted and there was residential building on the property throughout the reference period. A claim of under s. 3.8 must fail.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel’s final determination that the evidence in its totality DOES NOT meets the principal residence requirements set out in Section 2 of the Bylaw and was not exempt for “limited use” under s. 3.8 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
27th September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 28, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2022-00022

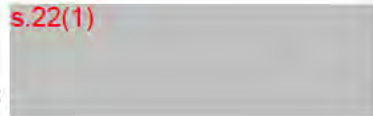
Vacancy Reference Period: 2020

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s.22(1)

Civic

Address:



At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for exemption for Property Undergoing Redevelopment or Major Renovations, pursuant to Section 3.2 of the Bylaw, and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In order to meet the exemption requirements set out in Section 3.2 of the Bylaw, it must be shown that the undisputed vacancy of this property for more than 6 months during the vacancy reference period of 2020 was because the property was undergoing redevelopment or major renovations; a) for which permits have been issued by the City, and b) which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

As part of their evidence, the property owner submitted Development Application Number DP-2019-00387, dated October 23, 2019. However, in this particular circumstance, the development permit pertains s.22(1) all of which were residential properties "improved with dwellings," therefore the property in question is not exempt under Section 3.2(b). In order for the Property Undergoing Redevelopment or Major Renovations exemption, a permit must have been issued by the City in advance of July 1, 2020 for this property.

Additionally, the property owner cites delays posed by the COVID-19 Pandemic as a contributing factor, however, the Bylaw does not give consideration to extenuating circumstances, such as the Pandemic.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under section 3.2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
27th September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 21, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2019-00101

Vacancy Reference Period: 2017

Folio:

s.22(1)

Civic

Address:



In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

The Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the REDEVELOPMENT OR MAJOR RENOVATION property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

The Panel finds that the evidence was neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City, pursuant to the governing Section of the Bylaw.

It is argued that the vacancy was because the home was uninhabitable. Section 3 "Exemptions" does not refer to the habitability of a dwelling unit. Nor does the Bylaw provide for that qualifier anywhere else. It is clear that the Bylaw imposes a tax on any non-exempt, vacant property that is classified as Class 1 (residential) property under the BC Assessment Act. There is no requirement in the Bylaw or the Assessment Act that the property so classified have any improvements such as a dwelling. Having regard to the purpose of the Bylaw, namely to promote the use of property classified as Class 1 (residential) by imposing a tax on empty or underutilized Class 1 property, it would be contrary to that purpose to interpret the Bylaw as applying to empty residential parcels and to residential parcels with "habitable" dwelling units on them, but not to parcels with "uninhabitable" dwelling units on them.

It has not been established that the home in question was uninhabitable. The lack of a door or an unfinished interior are not reasonable indicia of habitability in the circumstances of this Bylaw. To hold otherwise would permit avoidance of the tax by the mere removal of a door or the "de-finishing" of an interior. Such could not have been the intention when the Bylaw was drafted. The existence of asbestos is not uncommon in homes built prior to 1990. Asbestos in older homes only poses a potential health risk when it is disturbed (HealthLinkBC). "Asbestos fibers that are enclosed behind walls, isolated in attics, bound tightly in an intact product or kept away from the interior environment of a home pose little risk." (HealthLinkBC)

Having reviewed and considered all evidence put before it in this case, and having weighed and measured it on a balance of probabilities, the Panel finds that the evidence in its totality is neither convincing nor effective in leading the Panel to a reasoned determination that the property in question was unoccupied for more than six months because it was undergoing redevelopment or major renovation for which permits had been issued by the City, and which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay. The Panel further finds that the evidence in its totality has been equally ineffective in leading the Panel to a reasoned determination that the property was unimproved with a dwelling unit, for which a complete rezoning enquiry or application, development permit application, or heritage alteration permit application had been submitted by or on behalf of the registered owner within the 2017 reference period.

Review Determination: NOT ACCEPTED

G. Molnar and S. Rose
Vacancy Tax Review Panel
Aug 21, 2022
ADR Institute of BC

Sep 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2019-00153
Vacancy Reference Period: 2018

Folio: s.22(1)
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Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The applicable Bylaw in this matter states in pertinent portion that “a vacancy tax is not payable under this Bylaw for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to ...Redevelop .. property (i) for which permits have been issued by the City and (ii) which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay...”

Here, the vacancy reference period is calendar year 2018. A new building permit was issued to Homeowner on 12 August 2015. The home was completed on 6 December 2018, more than 3 years later.

However, the second portion of the Bylaw requires that the Chief Building Official find that the permits are being carried out diligently and without unnecessary delay. A 23 June 2020 letter from City of Vancouver's Development, Building and Licensing, Vacancy Tax department states that the permits were NOT being carried out diligently and without unnecessary delay. Comments from City inspectors found that the exterior of the home was completed by 7 December 2017 after work appeared to have stopped in May 2017. Homeowner claims that the reason for the delay was s.22(1) and that Homeowner should not be charged with s.22(1) chosen by the Homeowner. Such is, of course, untrue since the principal is responsible for the acts of the agent within the scope of the agent's employment. Here, s.22(1) is transferable to the Homeowner who hired them. Therefore, the Homeowner's claim of exemption must fail.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 08, 2021

CONFIDENTIAL

s.22(1)



File Number: RC-2019-00163
Vacancy Reference Period: 2017

Folio:
Civic
Address:

s.22(1)



RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

On careful consideration of the evidence submitted in its totality, the Panel finds that the evidence is neither compelling nor effective in leading the Panel to a reasoned determination that the Property was vacant for at least six months during the reference period because it was undergoing redevelopment or major renovation for which Permits had been issued by the City, and which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

In accordance with the Vacancy Tax Bylaw, the tax "is not payable...if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following: (a) Redevelop or safely carry out major renovations to the property: (i) for which permits have been issued by the City, and (ii) which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay." In order to be exempt under section 3.2 of the Bylaw, applicable permits must be issued in advance of July 1, 2017, however, both permits for the property in question were issued in the fall of 2017: BP-2016-00848 (October 5, 2017) and BP-2017-04260 (September 13, 2017).

Although the property required additional steps as part of the planning and permit application process, including review by the Board of Variance and an Archeological Impact Assessment, there were significant delays with the entire process, which was initially undertaken in 2013 when the owner took possession of the property in question, and these delays and challenges were not as a result of action or inaction by the City of Vancouver, based on the Panel's assessment.

The Panel has also considered whether the Tenanted property status could apply, however, there is no evidence to support that the property was "rented out and occupied by a subtenant for residential purposes in periods of 30 or more consecutive days, for at least six months of the vacancy reference period," which would render the property exempt under Section 2.2 of the Bylaw. Because the property was improved with a dwelling, it was incumbent on the owner to maintain the property and to have it occupied by a tenant or permitted occupant. Ultimately, the property is considered to have been vacant for the purposes of this Bylaw.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver



Vacancy Tax Review Panel

Sep 21, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2019-00174
Vacancy Reference Period: 2017

Folio: s.22(1)
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Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the REDEVELOPMENT OR MAJOR RENOVATION property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

In the course of its review, the Panel finds that the evidence was neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City, pursuant to the governing Section of the Bylaw.

The subject parcel was unoccupied during the first 180 days of the reference period 2017. During that period the homeowner had neither a permit to establish a "redevelopment/major renovation" exemption under s. 3.2 (a) of the Bylaw, nor had they made application for a development permit in order to establish a "redevelopment of unimproved property" exemption under s. 3.2 (b) of the Bylaw. The Panel finds that the wording of Section 3 of the Bylaw is strict and precise in that regard.

The Panel has also considered the intent of the Bylaw to incent the owners of all property classified as Class 1 (Residential) property, whether improved with a habitable or uninhabitable residential building or not, to see that the property is used as a principle residence or as rental accommodation. and based on that, the Panel finds that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and S. Rose
Vacancy Tax Review Panel
Aug 12, 2021
ADR Institute of BC

Feb 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00007
Vacancy Reference Period: 2018

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in 2018 was not because it was undergoing redevelopment or major renovation with permits issued by the City. In the opinion of the Chief Building Office, the scope of the renovation was not major and would not have required unoccupancy for more than six months in 2018.
- Minor renovations do not qualify for an exemption. There are many types of renovations that may make occupancy unsafe or impractical while work is underway. However, very few of these will require the property to be empty for more than six months. If a renovation project can be completed in less than six months, the property must continue to be the principal residence of the owner, a friend, or family member, be rented out (in periods of 30 or more consecutive days) for at least six months of the year, or be eligible for one of the other exemption categories, to be exempt from Vacancy Tax.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

May 25, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00009
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- Based on the following

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

May 18, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00011
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- See panelists determination comments

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Feb 18, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00013
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- Based on the information provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in 2018 was not because it was carrying out redevelopment or initial development of residential property that is unimproved with any dwelling units, for which a development permit application is under review by the City, and is considered vacant under the Vacancy Tax By-Law.

The property was vacant land throughout 2018 and in order to be eligible for an exemption under section 3.2 of the Vacancy Tax By-Law, a development or building permit application must have been submitted and under review by the City by July 1, 2018.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/eht.

Vacancy Tax Department
City of Vancouver



Vacancy Tax Review Panel

Sep 07, 2022

CONFIDENTIAL

s.22(1)

A large rectangular grey box redacting the content of the first column.

File Number: RC-2020-00016

Vacancy Reference Period: 2018

Folio:

Civic

Address:

s.22(1)

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The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the Principal Residence property status claimed pursuant to Section 2 of the Bylaw and that the property DOES NOT qualify for the Occupancy for Full-Time Employment property status pursuant to section 3 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

No primary evidence was provided here to prove the property was a principal residence, such as government issued identification bearing the correct address, for instance, a BC driver's license. In fact, in her 22 September 2019 letter, the homeowner writes "for insurance policies and other government-issued ID, we did not switch our mailing address from our long-term s.22(1) s.22(1)

In addition to government-issued identification, secondary evidence is considered, including the owner's utility bills, ICBC registration and insurance documents, records attached to Ferry travel, and personal calendars with hand-written entries.

The content of the homeowner's 22 September letter is noted with interest. In particular, the Panel notes that the statements made in this letter further support the finding that the property in question is NOT the principal residence of the homeowners.

The evidence does not point to the property being used as a principal residence and this argument fails.

Documentation from s.22(1) has been received to indicate s.22(1). However, upon review of the s.22(1) they fail to establish that the property was occupied by a registered owner for a minimum of 180 days during the 2018 Vacancy Reference Period because the registered owner worked in Greater Vancouver.

Given the lack of evidence indicating that the property was occupied by a registered owner for a minimum of 180 days during the Reference Period because the registered owner worked in the City or Greater Vancouver, the claim of exemption based on Occupancy for Full-Time Employment must fail.

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property in question meets the requirements of a Principal Residence or the Occupancy for Full time Employment Exemption.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
27th of June, 2022

Feb 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00020
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- As there was no tenancy agreement in place or rental income received, the property has been assessed by the Vacancy Tax Review Officer under the "Principal Residence - Permitted Occupier" property declaration status.

The Vacancy Tax Review Officer considers that the evidence provided was not sufficient to determine that this property was the principal residence of the owner, his/her family member or friend, or other permitted occupier for at least six months in 2018.

A "principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00022
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The reasons given by the CBO show a reasonable basis for the conclusion reached: that the work was not carried out diligently and without unreasonable delay.

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient/inappropriate evidence to support the redevelopment or major renovation property status claimed for 2018. Having carefully considered all evidence provided, the Panel finds the evidence neither compelling nor effective in leading the Panel to a reasoned determination, on a balance of probabilities, that the property was unoccupied for more than six months during the reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City, and which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 21, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00030
Vacancy Reference Period: 2019

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

This letter is to inform you that the Vacancy Tax Review Panel has concluded its review of your submitted review request and all supporting documents provided in support of your Property Status Declaration.

Based upon a review of your review request, the Vacancy Tax Review Panel has determined that your property is no longer subject to the Vacancy Tax. Your Vacancy Tax Notice will be cancelled.

If you paid the Vacancy Tax before this determination letter was issued, call 3-1-1 to start the refund process. Otherwise, no further action is required on your behalf.

Vacancy Tax Department
City of Vancouver

Feb 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00031
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in 2018 was not because it was undergoing redevelopment or major renovation with permits issued by the City.

To be eligible for an exemption under section 3.2(a) of the Vacancy Tax By-Law, a building permit (BP) must have been issued by July 1, 2018. Renovations not requiring a building permit are not eligible for an exemption.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Feb 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00034
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in 2018 was not because it was undergoing redevelopment or major renovation with permits issued by the City. To be eligible for an exemption, a building permit must have been in an issued status for at least six months in 2018 (issued by July 1, 2018).

An application for a building permit (DB-2018 02670) was submitted on May 17, 2018. As no building permit was issued by July 1, 2018, it is not eligible for the "Property undergoing redevelopment or major renovation" exemption in Section 3.2(a) of the Vacancy Tax By-Law.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Feb 18, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00035
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Vacancy Tax Review Officer considers that the evidence provided was not sufficient to determine that the property was tenanted for at least six months in 2018 for residential purposes, for terms of at least 30 or more consecutive days, and is considered vacant under the Vacancy Tax By-Law.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/eht.

Vacancy Tax Department
City of Vancouver

Feb 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00036
Vacancy Reference Period: 2019

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in 2019 was not because it was subject to a strata rental bylaw restriction as of November 16, 2016 that prohibited rentals or restricted the number of units that may be rented, and the maximum allowable number of rentals had already been reached.

The strata restriction exemption in section 3.4 of the Vacancy By Law does not apply to strata units where there is a restriction on the minimum duration of a tenancy.

Based on the evidence provided, the property would be considered a "Second Home" which is defined as a home that is used occasionally or intermittently by an owner or his/her guests, or held as an investment. The amount of days that a property is physically occupied by an owner, his/her family members or guests, does not determine whether the property is exempt from the tax.

If the property is not a principal residence or tenanted for at least six months of the vacancy tax reference year, and does not qualify for an exemption, it is considered vacant and the Vacancy Tax will apply.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Feb 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00037
Vacancy Reference Period: 2018

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

This letter is to inform you that the Vacancy Tax Review Panel has concluded its review of your submitted review request and all supporting documents provided in support of your Property Status Declaration.

Based upon a review of your review request, the Vacancy Tax Review Panel has determined that your property is no longer subject to the Vacancy Tax. Your Vacancy Tax Notice will be cancelled.

If you paid the Vacancy Tax before this determination letter was issued, call 3-1-1 to start the refund process. Otherwise, no further action is required on your behalf.

Vacancy Tax Department
City of Vancouver

Feb 18, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00040
Vacancy Reference Period: 2017

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Vacancy Tax Review Officer considers that the evidence provided was not sufficient to determine that this property was the principal residence of an occupier for at least six months in 2017, and is considered vacant under the Vacancy Tax By-Law.

A "principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence.

Based on the evidence provided, the property would be considered a "Second Home" which is defined as a home that is used occasionally or intermittently by an owner or his/her guests, or held as an investment. The amount of days that a property is physically occupied by an owner, his/her family members or guests, does not determine whether the property is exempt from the tax.

If the property is not a principal residence or tenanted for at least six months of the vacancy tax reference year, and does not qualify for an exemption, it is considered vacant and the Vacancy Tax will apply.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Feb 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00042
Vacancy Reference Period: 2017

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Vacancy Tax Review Officer considers that the evidence provided was not sufficient to determine that this property was the principal residence of an occupier for at least six months in the vacancy reference period, and is considered vacant under the Vacancy Tax By-Law.

A "principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence.

The amount of days that a property is physically occupied by an owner, his/her family members or guests, does not determine whether the property is exempt from the tax.

s.22(1) for the purposes of the Vacancy Tax so long as that is where each individual lives, makes his or her home and conducts his or her daily affairs. s.22(1) they must be able to provide information or evidence that demonstrates that property was used in accordance with the bylaw's definition for at least six months of the applicable tax year.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00043
Vacancy Reference Period: 2017

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

If a homeowner declares the property as the principal residence of the homeowner, they must be able to provide evidence that demonstrates that the property was used in accordance with the Bylaw's definition as a "principal residence" for at least six months of the vacancy reference period.

A "principal residence" means the usual place where an individual lives, makes his home and conducts his daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's license, personal identification, vehicle registration and utility bills.

Although the Vacancy Tax Bylaw does not require that a Homeowner be physically present in order to demonstrate principal residency, the Homeowner is required to demonstrate that the property was established as their principal residence prior to and during their temporary relocation.

In this instance, there is no demonstration that the property in question was the homeowner's principal residence prior to 2017. Homeowner s.22(1)

s.22(1)

s.22(1)

s.22(1)

that s.22(1)

in question during the first nine months of 2017, the vacancy reference period, s.22(1)

s.22(1)

s.22(1)

as his principal residence prior to 2017.

Although he says

of the vacancy reference year. He has no

that the property in question was treated

In order to prove principal residence, homeowner is required to offer one piece of primary evidence and at least three pieces of secondary evidence. Here, the homeowner offered a

s.22(1)

s.22(1)

As secondary evidence, homeowner has offered property insurance mid-December 2016 through mid-December 2017, along with utility bills and bank statements, all of which reflect the address of the property in question although the BC Hydro statement is billed in the name

s.22(1)

Because homeowner is unable to offer primary evidence supporting more than 2 month's worth of principal residence in Vancouver in 2017, homeowner's claim of exemption under the Principal Residence - Homeowner exemption must fail. Even taking into consideration the homeowner's s.22(1)

s.22(1) this residential property and that the property went unoccupied as a principal residence for anyone for more than 180 during that year and was not used as rental accommodation.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Feb 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00044
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason this property was unoccupied for more than six months in 2018 was not because the lawful use was limited as per section 3.8 of the Vacancy Tax By-Law.

The existing zoning restricts what can be developed on the property; however, it does not restrict the occupancy of the existing building on the property. The property is a Class 1 residential building and designated as Single Room Accommodation ("SRA") under the SRA By-law and therefore, could be occupied as an SRA until a new development / re-zoning has been approved by the City.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver



Vacancy Tax Review Panel

Jul 13, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00047

Vacancy Reference Period: 2018

Folio:

s.22(1)

Civic

Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the subject case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the Property Undergoing Redevelopment or Major Renovations Exemption pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In the course of its detailed analysis, the Panel finds that the homeowner's evidence submitted in support of exemption was neither sufficient nor effective in supporting the property status claimed. In order to qualify for exemption under Section 3.2, a property must have been unoccupied for more than six months during the vacancy reference period in order to redevelop or safely carry out major renovations to the property for which permits have been issued by the City, and which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay.

The Panel further notes that a building permit was issued in respect of the property on 29th May 2008, and that the corresponding work was not completed until 16th February 2017. No further building permits issued in respect of the subject property during the reference period. The Panel has further considered the documentation addressing review and analysis of this case by the City's Chief Building Officer, which resulted in an opinion that the subject work was not being carried out diligently and without unnecessary delay, specific to this reference period.

Following careful review of all evidence provided in this case, the Panel finds that the evidence in its totality was neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during the 2018 Vacancy Review Period because it was undergoing redevelopment or major renovation with permits issued by the City, and which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
12th August, 2021



Vacancy Tax Review Panel

Jul 13, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00048

Vacancy Reference Period: 2018

Folio:

s.22(1)

Civic

Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the subject case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the Property Undergoing Redevelopment or Major Renovations Exemption pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In the course of its detailed analysis, the Panel finds that the evidence submitted by the owner was neither sufficient nor effective in supporting the property status claimed. In order to qualify for exemption under Section 3.2, a property must have been unoccupied for more than six months during the vacancy reference period in order to redevelop or safely carry out major renovations to the property for which permits have been issued by the City, and which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay.

The Panel further notes that a building permit was issued in respect of the property on 29th May 2008, and that the corresponding work was not completed until 16th February 2017. No further building permits issued in respect of the subject property during the reference period. The Panel has further considered the documentation addressing review and analysis of this case by the City's Chief Building Official, which resulted in an opinion that the subject work was not being carried out diligently and without unnecessary delay, specific to this reference period.

Following careful review of all evidence put before it in this matter, The Panel finds that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during the 2018 Vacancy Review Period because it was undergoing redevelopment or major renovation with permits issued by the City, and which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
12th August, 2021



Vacancy Tax Review Panel

Jul 13, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00049
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the subject case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the Property Undergoing Redevelopment or Major Renovations Exemption pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In the course of its detailed analysis, the Panel finds that the evidence submitted by the owner was neither sufficient nor effective in supporting the property status claimed. In order to qualify for exemption under Section 3.2, a property must have been unoccupied for more than six months during the vacancy reference period in order to redevelop or safely carry out major renovations to the property for which permits have been issued by the City, and which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay.

The Panel further notes that a building permit was issued in respect of the property on 29th May 2008, and that the corresponding work was not completed until 16th February 2017. No further building permits issued in respect of the subject property during the reference period. The Panel has further considered the documentation addressing review and analysis of this case by the City's Chief Building Official, which resulted in an opinion that the subject work was not being carried out diligently and without unnecessary delay, specific to this reference period.

Following careful review of all evidence put before it in this matter, The Panel finds that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during the 2018 Vacancy Review Period because it was undergoing redevelopment or major renovation with permits issued by the City, and which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
12th August, 2021

Feb 18, 2021

CONFIDENTIAL

s.22(1)



File Number: RC-2020-00050

Vacancy Reference Period: 2019

Folio:

Civic

Address:

s.22(1)



RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Vacancy Tax Review Officer considers that the evidence provided was not sufficient to determine that this property was the principal residence of an occupier for at least six months in the vacancy reference period, and is considered vacant under the Vacancy Tax By-Law.

A "principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence (in Vancouver or elsewhere).

Based on the evidence provided, the property would be considered a "Second Home" which is defined as a home that is used occasionally or intermittently by an owner or his/her guests, or held as an investment. The amount of days that a property is physically occupied by an owner, his/her family members or guests, does not determine whether the property is exempt from the tax.

Please note that the City's Vacancy Tax By-Law does not have the same exemptions as the BC Speculation and Vacancy Tax. Specifically, there is no exemption for strata hotels. All properties classified as Class 1 - Residential by BC Assessment are subject to the City's vacancy tax. If you consider that your property should be re-classified from Class 1 - Residential to Class 6 - Business or split-classed, please contact BC Assessment.

If the property is not the principal residence of an occupier or tenanted for at least six months of the vacancy reference period, and does not qualify for an exemption, it is considered vacant and the Vacancy Tax will apply.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00051
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support the Principal Residence - Permitted - Occupant property status for 2018. The Bylaw defines Principal Residence as being "the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, pay bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's license, personal identification, vehicle registration and utility bills. Sufficient evidence was not provided to demonstrate that the permitted occupant was utilizing the property in question as his primary residence during the 2018 vacancy reference period.

The homeowner has failed to provide the common primary, objective evidence associated with principal residency, as defined in the Bylaw and as specifically itemized to the homeowner by the City. In the absence of such evidence, affidavit evidence from third parties is not a reasonable, objective ground for determining principal residency.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00053
Vacancy Reference Period: 2017

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

There is insufficient evidence to support that the property in question was utilized as a principal residence by the registered owner during the 2017 Vacancy Reference Period.

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support the Principal Residence - Homeowner property status for 2017.

The evidence provided by the homeowners was not sufficient and appropriate to support or corroborate the homeowners' contention that the property was the principal residence of either homeowner for at least six months during the reference period.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/eht.

Vacancy Tax Department
City of Vancouver



Vacancy Tax Review Panel

Jul 13, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00055
Vacancy Reference Period: 2018

Folio:
Civic
Address:

s.22(1)

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the subject case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the Property Undergoing Redevelopment or Major Renovations Exemption pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

Arising from its detailed analysis, the Panel finds that the evidence submitted by the home owner was neither sufficient nor effective in supporting the property status claimed. In order to qualify for exemption under Section 3.2, a property must have been unoccupied for more than six months during the vacancy reference period in order to redevelop or safely carry out major renovations to the property for which permits have been issued by the City, and which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay.

In the course of its review, the Panel further notes that building permits were issued for this property on 6th July 2011 and 7th May 2014, and that the corresponding work was not completed until 27th September 2019. No further building permits were issued in respect of the subject property during the reference period.

The Panel has further considered the documentation addressing review and analysis of this case by the City's Chief Building Official, which resulted in an opinion that the subject work was not being carried out diligently and without unnecessary delay, specific to this reference period. Following careful review, of all evidence provided in this matter, the Panel finds that the evidence in its totality was neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during the 2018 Vacancy Review Period because it was undergoing redevelopment or major renovation with permits issued by the City, and which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
12th August, 2021

Feb 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00057
Vacancy Reference Period: 2018

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in 2018 was not because it was undergoing redevelopment or major renovation with permits issued by the City, which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

As per the Order Letter (attached to the mailed Complaint determination letter) received from the City's Development, Building, and Licensing Department, it is the opinion of the Chief Building Official that the redevelopment or renovation was not being carried out diligently and without unnecessary delay.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 09, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00060
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support the Property Undergoing Redevelopment or Major Renovations property status for 2018.

Although the Development Permit DE 419041 was issued in advance of July 1, 2018, that permit does not allow demolition or construction to commence, and therefore the property was not unoccupied for more than six months in order to complete redevelopment. The period of time during the 2018 Vacancy Reference Period where occupancy was not possible due to redevelopment was from September 19-December 31, 2018.

Having carefully considered all evidence provided, the Panel finds the evidence neither compelling nor effective in leading the Panel to a reasoned determination, on a balance of probabilities, that the property was unoccupied for more than six months during the reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City, and which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 09, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00061
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support the Principal Residence - Permitted Occupant property status for 2018.

The Bylaw, defines Principal Residence as "the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, pay bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's license, personal identification, vehicle registration and utility bills."

Individuals may have only one Principal Residence in the world, which may be different than s.22(1). While the permitted occupant, provided documentary evidence to support that the property was occupied for greater than 6 months during the 2018 Vacancy Reference Period, it has not sufficiently proven that the property in question is the "usual place" where the permitted occupant lives and makes her home and conducts her daily affairs. Rather, the evidence points to a secondary home that was occupied for 194 days during 2018.

Though occupied for over six months in 2018, the property was not occupied as LC's principal residence as defined in the Bylaw.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 09, 2021

CONFIDENTIAL

s.22(1)



File Number: RC-2020-00063

Vacancy Reference Period: 2018

Folio:

Civic

Address:

s.22(1)



RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support the Principal Residence - Permitted Occupant property status for 2018.

The Bylaw defines Principal Residence as "the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's license, personal identification, vehicle registration and utility bills." Upon review of both the primary evidence and secondary evidence submitted by, and on behalf of, s.22(1) the Permitted Occupant, the panel finds that the property at s.22(1) was not utilized as her Primary Residence during the 2018 Vacancy Reference period; rather, on the balance of probabilities, the property at s.22(1) was her Primary Residence.

The totality of evidence was not sufficient and appropriate to support the claim that the home was occupied by s.22(1) as her principal residence for at least six months in the reference year of 2018. Having regard to the definition of "principal residence" in the Bylaw, I have considered the fact that during the reference year and the year before and the year after, the purported occupant claimed the Home Owner Grant (HOG) on another property, thus tacitly confirming the other property to be her principal residence. The purported occupant's driver's license, valid for the years 2017 to 2022, shows a different address. Relevant documentation from BC Hydro and Fortis has been submitted but the important portions indicating mailing information to the purported occupant have been removed. These inconsistencies greatly reduce any reliance to be placed on affidavit or written statement evidence to the contrary.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 10, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00064
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support the Principal Residence - Permitted Occupant property status for 2018.

The Bylaw defines Principal Residence as "the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, pay bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's license, personal identification, vehicle registration and utility bills". While a significant amount of documentation has been provided by the "permitted occupant", the evidence is not compelling and it does not support that the property is occupied as a Principal Residence. Rather the documentary evidence suggests that the individual has been entrusted to maintain and oversee the property in question on behalf of the owners s.22(1) s.22(1)

On careful review of all evidence submitted in this matter, the evidence in its totality is neither effective nor compelling in leading the Panel to a reasoned determination, on a balance of probabilities, that the property served as a claimed permitted occupant's principal residence for at least six months during the vacancy reference period.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver



Vacancy Tax Review Panel

Jul 13, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2020-00065

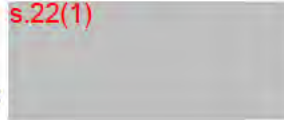
Vacancy Reference Period: 2018

Folio:

Civic

Address:

s.22(1)



The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the subject case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the REDEVELOPMENT OR MAJOR RENOVATION property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw. In order to qualify for exemption under this Section, the property must have been unoccupied for more than six months during the vacancy reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City, and which, in the opinion of the Chief Building Officer, were being carried out diligently and without unnecessary delay.

Arising from its detailed analysis, the Panel finds that the homeowner's evidence submitted was neither sufficient nor effective in supporting the property status claimed. In this case, the Panel notes that all permits attached to property in question were issued after 1st July 2018, thereby eliminating the possibility that the property was unoccupied for more than six months within the reference period, under valid permit as required by the Bylaw. While the Panel has taken note of the homeowner's argument that the dwelling structure located on the property was not habitable, it has also considered that the bylaw does not contemplate whether or not a dwelling is inhabitable; rather, the Bylaw strictly contemplates whether or not permits were duly in place at material times within the reference period.

The Panel has further considered that the evidence fails to support a finding that any delays underpinning permit issue were due to City error or delay. For these reasons, the Panel finds that the property does not meet the requirements for exemption as set out under Section 3.2 of the Bylaw.

The Panel has also given consideration to the owner's arguments, submitted by way of legal counsel, suggesting that the described structure located on the property throughout material times was not, by way of the definition cited, a "dwelling". While it acknowledges the owner's arguments, the Panel does not find them sufficiently compelling, when measured against what the Panel infers to be the spirit and intent of the Bylaw, in drawing no distinction between habitable and uninhabitable structures located on residential property within the City of Vancouver. Drawing no such distinction, the Bylaw places an onus upon the owner to bring the property into a habitable state.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
12 August 2021

Sep 10, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00066
Vacancy Reference Period: 2019

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support the argument that the residential property was the principal residence of the registered owner for 2019.

The panel has applied the definition of "principal residence" to the facts of this case. The reference period is 2019. The evidence does not support the residential property being the principal residence of the owner for the requisite period in 2019. She obtained a BC

s.22(1) The owner's property insurance for over 9 months of 2019 describes the property as a seasonal condominium. Conversely, evidence supporting residency includes Telus bills for 12 months and hydro bills for 8 months. The panel finds the lack of a BC driver's license for most of the year and the description of the residential property on the property insurance for over 9 months as seasonal to be compelling. There is also evidence of the homeowner s.22(1)

s.22(1) does not prove residency. Based on the evidence, the registered owner's connection to Vancouver is in line with a second home, with her primary residence being in s.22(1) As a result, the residential property should be subject to the vacancy tax.

The Panel finds that the evidence submitted, in its totality, is neither compelling nor effective in leading the Panel to a reasoned determination, on a balance of probabilities, that the property served as a registered owner's principal residence for a minimum of six months within the vacancy reference period.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 10, 2021

CONFIDENTIAL

s.22(1)



File Number: RC-2020-00067
Vacancy Reference Period: 2018

Folio:
Civic
Address:

s.22(1)



RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support the Principal Residence - Permitted Occupant property status for 2018.

Although considerable documentary evidence was provided, only one document, a Telus Bill from dated December 22, 2018, supported the Principal Residence - Permitted Occupant declaration for the 2018 Vacancy Reference period. Reviewed in its entirety, the documentation supports that the permitted occupants principal residence is their property in s.22(1). As a result, the property in question at s.22(1) is being utilized by the homeowners s.22(1) on an occasional and temporary basis and does not satisfy the requirements of Principal Residence as set out in the Bylaw. Therefore, for the purposes of this review, the property is considered to be a secondary home and is subject to the Vacancy Tax.

In carefully weighing the evidence of the case, we have come to the conclusion that the residential property was not being occupied as a principal residence in 2018. The panel has considered the definition of "principal residence" within the bylaw. The declared occupant's driver's license displays an address in s.22(1) and has not been changed by a sticker. Even more persuasive is the ICBC insurance renewal in November of 2018 also showing a s.22(1) address. Other important documentation, such as the Pension and OAS documentation also do not match the residential property address. The evidence does not support that the declared occupant is both living at the principal residence and conducting his affairs there. Having utility bills and Telus bills alone go to the address are not enough to establish the residential property being used a principal residence. The panel accepts the owner's comments regarding s.22(1). We find the weight of the evidence does not support the status of the declared resident occupying the residential property as a principal residence.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 21, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00068
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support the Principal Residence - Permitted Occupant property status for 2018. Principal Residence means "the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, pay bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including without limitation, income tax returns, Medical Services Plan documentation, driver's license, personal identification, vehicle registration and utility bills."

The panel has reviewed in detail the documentation provided by the property owner on s.22(1) and there is insufficient evidence to support the Principal Residence - Permitted Occupant status for the 2018 Vacancy Reference Period. All of the documentation addressed to the Permitted Occupant during the 2018 year references other addresses. The Shaw bills for the 2018 year are in the property owner's name, not the permitted occupant's, and therefore do not help to establish Principal Residence status. Similarly, although the BC Hydro invoices demonstrate usage over the 2018 Vacancy Reference Period they also are in s.22(1) and do not establish s.22(1) at the property.

If an owner declares the property as the principal residence of the permitted occupant, that owner must be able to prove that the property was used as the principal residence of the permitted occupant for at least six month of the vacancy reference period, here calendar year 2018. The owner must provide at least one piece of primary evidence and any three pieces of secondary evidence to support his claim.

Primary evidence is a BC Driver's License, a BC ID card, a BC Services Card or another government issued identification that reflects the address in question as the address of the permitted occupant. Here, the owner did provide a copy of the permitted occupant's s.22(1) and it has a sticker changing the address reflected there to the address in question, but there is no indication when this change was made.

Secondary evidence includes other documents which owner has offered, i.e.

- s.22(1) shows permitted occupant's

address as s.22(1)

- ICBC Certificate of Insurance effective 30 Dec 2018 shows the Permitted Occupant's address as s.22(1)
- Shaw and Hydro bills to the address in question were sent in the name of s.22(1) property owner, but not in the name of Permitted Occupant.
- CRA T2007 Statement of Benefits for 2018 again shows Permitted Occupant's address as s.22(1)
- ICBC Residential history shows Permitted Occupant's address as s.22(1) beginning on 31 July 2019. Property owner offered an invoice from a locksmith allegedly hired to rekey a mailbox that Permitted Occupant was unable, and uninterested in accessing, but that invoice is dated 10 August 2019 and is not applicable to this vacancy year discussion.

The property owner's submissions advise a story that is difficult, and his position is appreciated. However, his inability to provide the necessary documentation to prove his claim of providing housing for a s.22(1) precludes any decision other than the one made.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 21, 2021

CONFIDENTIAL

s.22(1)



File Number: RC-2020-00071

Vacancy Reference Period: 2018

Folio:

Civic

Address:

s.22(1)



RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

On careful consideration of the evidence provided, in its totality, the Panel finds that it is neither compelling nor effective in leading the Panel to a reasoned determination that the property was occupied by a tenant or subtenant for residential purposes in periods of 30 or more consecutive days for at least six months of the reference period. The Panel further finds that the evidence is also not compelling or effective in leading the Panel to a reasoned determination that the property served as a registered owner's principal residence for at least six months during the reference period.

In order to be exempt from the Vacancy Tax, the property in question must have been rented out and occupied by a tenant or subtenant for residential purposes in periods of 30 or more consecutive days, for at least six months of the 2018 Vacancy Reference Period. "Properties are considered to be vacant if they have been unoccupied for more than six months during the tax year." The Residential Lease Agreement does not stipulate a rental amount, and without consideration, there is no valid tenancy.

A Principal Residence is defined by the Bylaw as "the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including without limitation, income tax returns, Medical Services Plan documentation, driver's license, personal identification, vehicle registration, and utility bills." Various pieces of evidence have been provided by the tenant/occupant, including their driver's license, where the civic address matches the address in question, however, the issue date has been redacted, and therefore it cannot be relied upon to support a Principal Residence declaration. Additionally, they have provided other statements and cheques issued to them at the civic address in question, however, they are all dated in 2019, which is outside of the 2018 Vacancy Reference Period. Lastly, the panel has given consideration to the two statutory declarations provided by the tenant/occupant, however, they, on their own, are not sufficient to support either exemption.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 21, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00072
Vacancy Reference Period: 2019

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support the Principal Residence - Homeowner property status claimed for 2019.

The Bylaw defines Principal Residence as "the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including without limitation, income tax returns, Medical Services Plan documentation, driver's license, personal identification, vehicle registration and utility bills." On careful review of all evidence submitted in this matter, the evidence in its totality is neither effective nor compelling in leading the Panel to a reasoned determination, on a balance of probabilities, that the property served as a registered owner's principal residence for at least six months during the vacancy reference period.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 21, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00074

Vacancy Reference Period: 2018

Folio:

s.22(1)

Civic

Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support the status of "principal residence of an occupier" for at least six months in 2018.

In order for a property to be "vacant" and thus taxable under the Bylaw, it must go unoccupied (by the homeowner, a permitted occupant or a renter) for more than 180 days during the reference period and in this case it was occupied for a total 230 days. However, the Bylaw requires that it be occupied as a "principal residence" (unless the occupant is a tenant). In the cases of s.22(1) s.22(1) Arguably the homeowner's property was the only residence they had. In the case of s.22(1) the property was clearly not a principal residence. It was temporary accommodation for three months while their family home, their principal residence, was being renovated.

The claim initially made by the homeowner that the property was occupied as the principal residence of the homeowner is not backed up by the evidence. The claim that the property has been occupied as the principal residence of an occupier so that it did not remain unoccupied for more than 180 days has also not been proven. s.22(1) was not occupying the property as a principal residence, but was using it for temporary accommodation while renovating a home. FS has not provided documentation, such as a driver's license, consistent with occupying the residential property as a principal residence. I accept that s.22(1) had no other residence at the time and that the residential property can be considered a principal residence in that instance. As a result, the residential property was not occupied as a principal residence of an occupier for the requisite period of time.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 21, 2021

CONFIDENTIAL

s.22(1)



File Number: RC-2020-00076

Vacancy Reference Period: 2018

Folio:

Civic

Address:

s.22(1)



RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is inappropriate evidence to support the Property Undergoing Redevelopment or Major Renovations property status for 2018.

In order to be exempt under Section 3.2(B)(i), the property either needs to be vacant land (ie: "unimproved with any dwelling units") or contain a heritage property. The Bylaw does not give consideration for uninhabitable dwellings and it is the COV's position that it is incumbent on the homeowner to ensure that the condition of the property remains habitable or is restored to such state where it could be occupied.

A vacancy tax is not payable for a parcel of residential property under section 3.2 of the Bylaw if the residential property was unoccupied for more than six months during the vacancy reference period (here, 2018) in order to redevelop the property for which permits have been issued by the City. Although there are other subsections to this Bylaw, for subsection (a), the pertinent part of which is quoted above, because the property in question has an existing dwelling. If a property with an existing dwelling is subject to this claim of exemption, a building or development permit must be issued prior to 1 July of the applicable vacancy reference year. In this instance, the application for the development permit was not submitted until 24 September 2018, well past the required "issuance date" 30 June 2018.

Property owner here has resisted application of the Bylaw, claiming that the dwelling extant on the property was uninhabitable. The property was purchased in s.22(1) in s.22(1) the dwelling of function that might permit occupancy.

However, there are no exemptions under the Bylaw for uninhabitable properties; the condition of the property is the responsibility of the property owner. It should be noted that, here, the uninhabitable nature of the dwelling on the property continued for more than three years prior to the submission of the development application in September 2018. As a result, the property owner's attempt to claim the Property Undergoing Redevelopment or Major Renovations Exemption for the vacancy year 2018 must fail.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Jul 06, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00077
Vacancy Reference Period: 2019

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

This letter is to inform you that the Vacancy Tax Review Panel has concluded its review of your submitted review request and all supporting documents provided in support of your Property Status Declaration.

Based upon a review of your review request, the Vacancy Tax Review Panel has determined that your property is no longer subject to the Vacancy Tax. Your Vacancy Tax Notice will be cancelled.

If you paid the Vacancy Tax before this determination letter was issued, call 3-1-1 to start the refund process. Otherwise, no further action is required on your behalf.

Vacancy Tax Department
City of Vancouver

Sep 21, 2021

CONFIDENTIAL

s.22(1)



File Number: RC-2020-00079

Vacancy Reference Period: 2018

Folio:

Civic

Address:

s.22(1)



RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient/inappropriate evidence to support either the Principal Residence - Homeowner OR Principal Residence - Permitted Occupant property status for 2018.

In accordance with the Bylaw, Principal Residence is defined as "the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, pay bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's license, personal identification, vehicle registration and utility bills."

No form of government issued ID (BCDL/BCID/BC Services Card/other) has been provided for either address, although in his conversation with the CA, s.22(1) indicated that all of these documents indicate the s.22(1). The only evidence provided which references the s.22(1) address were the three (3) letters from the Strata referencing various Bylaw complaints during the 2018 Vacancy Reference Period, and although they confirm that someone was using the property at certain points in time, they do not provide sufficient evidence to establish that the property was occupied for at least 6 months as a Principal Residence, as per the Bylaw's above noted definition. Telus invoices were also provided for the 2018 VRP, however, the service/mailing addresses were not visible on the portions of the documents provided.

The Panel further finds that the evidence provided was neither compelling nor effective in leading the Panel to a reasoned determination that the subject property served as principal residence for either a registered owner or a permitted occupant for a minimum of six months during the vacancy reference period.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 21, 2021

CONFIDENTIAL

s.22(1)



File Number: RC-2020-00081

Vacancy Reference Period: 2018

Folio:

Civic

Address:

s.22(1)



RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is inappropriate evidence to support the Principal Residence - Permitted Occupant property status for 2018.

In accordance with the Bylaw, in order to be exempt from the VT, the property must be occupied as a principal residence of the owner/permitted occupant, or rented out and occupied by a tenant or subtenant for residential purposes in periods of 30 or more consecutive days, for at least six months during the Vacancy Reference Period. The Bylaw defines Principal Residence as "the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, pay bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's license, personal identification, vehicle registration and utility bills."

Insufficient evidence has been provided to support the Principal Residence - Permitted Occupant declaration for the property at s.22(1). Although the property owner has provided documentation to demonstrate that efforts were made to rent the property in question for May, 2018 onwards, it was not successfully tenanted. There is currently no Bylaw exemption in place for properties that are advertised as available for rent but are not tenanted.

Although the property has been relied on for use by family over the years, for the purposes of the Vacancy Tax Bylaw, the property is considered a second home, not a principal residence. A second home is defined as "a home that is used occasionally or intermittently by an owner or his/her guest, or held as an investment." As the property was not tenanted or the PR of a permitted occupant for at least six months during the 2018 VRP, it is considered vacant for the purposes of the EHT Bylaw.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 21, 2021

CONFIDENTIAL

s.22(1)



File Number: RC-2020-00083

Vacancy Reference Period: 2019

Folio:

Civic

Address:

s.22(1)



RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support either the Principal Residence - Homeowner OR Tenanted property statuses for 2019.

The Homeowner has another Principal Residence in Vancouver. The Bylaw does not give consideration for multiple Principal Residences, nor does it allow individuals to designate which property is their Principal Residence in circumstances where the homeowner has multiple properties.

The property is not tenanted by an arm's length tenant for residential purposes, for at least six months of the 2019 vacancy reference period. The 5-year lease agreement provided, signed August 1, 2018, is for commercial tenancy ("Permitted use: For the purpose of an office for the s.22(1) and s.22(1) by a non-arm's length party (the lease agreement is signed with the same signature for both the landlord and the tenant). Therefore the requirement of tenanted for residential purposes has not been met and thus the property is considered vacant under the VT Bylaw.

Lastly, the panel has given consideration to the property owner's request to reclassify the property to Class 6 - Commercial. As the change with BC Assessment will not be made until a future Vacancy Review Period and the amount of the EHT is approximately equal to the increased taxes levied on Class 6 properties, the panel believes that the Vacancy tax should be imposed on the property.

On careful consideration of the evidence provided in this case, the Panel finds it to be neither compelling or effective in leading the Panel to a reasoned determination that the property was occupied by an arms-length tenant for residential purposes in periods of 30 or more consecutive days for at least six months within the 2019 reference period.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/eht.

Vacancy Tax Department
City of Vancouver

Jul 06, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00085
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

This letter is to inform you that the Vacancy Tax Review Panel has concluded its review of your submitted review request and all supporting documents provided in support of your Property Status Declaration.

Based upon a review of your review request, the Vacancy Tax Review Panel has determined that your property is no longer subject to the Vacancy Tax. Your Vacancy Tax Notice will be cancelled.

If you paid the Vacancy Tax before this determination letter was issued, call 3-1-1 to start the refund process. Otherwise, no further action is required on your behalf.

Vacancy Tax Department
City of Vancouver

Jul 05, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00086
Vacancy Reference Period: 2017

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

This letter is to inform you that the Vacancy Tax Review Panel has concluded its review of your submitted review request and all supporting documents provided in support of your Property Status Declaration.

Based upon a review of your review request, the Vacancy Tax Review Panel has determined that your property is no longer subject to the Vacancy Tax. Your Vacancy Tax Notice will be cancelled.

If you paid the Vacancy Tax before this determination letter was issued, call 3-1-1 to start the refund process. Otherwise, no further action is required on your behalf.

Vacancy Tax Department
City of Vancouver

Sep 21, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00088
Vacancy Reference Period: 2019

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support the Property Undergoing Redevelopment or Major Renovations property status for 2019.

There is no evidence to support that the residential property was unoccupied for more than six months during the vacancy reference period in order to redevelop or safely carry out major renovations to the property for which permits have been issued. In order to be eligible for this exemption, applicable permits must have been issued by July 1, 2019. The only permits issued for the property in question, which do not permit demolition or construction were the Sewer & Water Connection Permit (SW 2019-01206) and the Street Use Permit (SU-2019-02355), both of which were issued in October, 2019.

Following careful consideration of all evidence submitted in its totality, the Panel finds that the evidence is neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during the reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City and which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay. The Panel finds no supportable basis for exemption under Section 3.2 of the Bylaw in this case.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Sep 21, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2020-00091
Vacancy Reference Period: 2019

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

The Vacancy Tax Review Panel advises the City that based on review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient evidence to support the Property Undergoing Redevelopment or Major Renovations Exemption OR the Principal Residence - Homeowner property status OR the Tenanted property status for 2019.

The renovations undertaken during the 2019 Vacancy Reference Period at the property in question were minor and did not require permits in order to undertake them. Accordingly, section 3.2 of Bylaw, Property Undergoing Redevelopment or Major Renovations does not apply, as a permit issued by the City is a requirement for exemption.

Although the property in question was in a "rental pool" for January and February 2019 (as a "hotel" space), however there is no evidence to support that the property was tenanted for residential purposes for periods of 30 or more consecutive days during that period of time. Therefore, the property is not exempt under the Tenanted status.

The owners have indicated that of the 40 weeks where the condo was available to them, they occupied it for 23 weeks between March and December while they renovated, and planned their transition from s.22(1). Documentation provided supports that the property was occupied by the owners for a period of time throughout the 2019 Vacancy Reference Period, however, as they maintained s.22(1) were provided as supporting evidence) and all other government issued ID's and correspondence continued to be delivered to their residence in s.22(1), it reasonably demonstrates that this continued to be their Principal Residence during the 2019 Vacancy Reference Period, whereby a Principal Residence is defined as "the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, pay bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, MSP documentation, driver's licenses, personal identification, vehicle registration and utility bills." Under the Vacancy Tax Bylaw, a property owner cannot have multiple Principal Residences, and where an individual owns multiple properties, they are not given discretion to designate which is their Principal Residence.

Based on the evidence provided, the property in question has not been established as the homeowners' Principal Residence and would be considered a Second Home, which is one that is "used occasionally or intermittently by an owner or his/her guest, or held as an investment."

Following careful consideration of the evidence submitted in its totality, measured on a balance of probabilities, the Panel finds that the evidence is neither compelling or effective in leading the Panel to a reasoned determination that the property was either unoccupied for more than six months during the reference period because it was undergoing redevelopment or major renovations for which Permits had been issued by the City, nor did it serve as the principal residence of either a registered owner for at least six months, or a tenant for at least six months residential purposes for periods of 30 or more consecutive days, during the vacancy reference period.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver



Vacancy Tax Review Panel

Jul 14, 2022

CONFIDENTIAL

s.22(1)

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File Number: RC-2020-00092
Vacancy Reference Period: 2018

Folio:
Civic
Address:

s.22(1)

A rectangular grey box redacting the content of the second column.

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the subject case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the PRINCIPAL RESIDENCE-PERMITTED OCCUPANT property status initially claimed pursuant to Section 2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw. In order to qualify for exemption under this Section, a property must have served as the principal residence of a permitted occupant for at least six months within the vacancy reference period.

In the course of its detailed analysis of the evidence submitted, the Panel finds a strong indication that the individual named as the permitted occupant was only attending the property on occasion, and that in fact that individual's principal residence was a different Civic address. In deed, the owner later conceded this, and subsequently amended their request for exemption to fall within the REDEVELOPMENT OR MAJOR RENOVATION property status.

In consideration of the owner's subsequent amended request, the Panel agrees with the City's Review Officer's determination that the property DOES NOT qualify for the REDEVELOPMENT OR MAJOR RENOVATION property status subsequently claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying that Section of the Bylaw. In order to qualify for exemption under this Section, a property must have been unoccupied for more than six months within the reference period because it was undergoing redevelopment or major renovations for which permits had been issued by the City, and which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

In this case, corresponding building permit issue occurred on 5th December, 2018, which, the Panel notes, is too late to afford permitted work taking place for more than six months within the reference period.

On careful consideration of the further evidence submitted, the Panel finds it to be neither compelling nor effective in leading the Panel to a reasoned determination that the property in question was unoccupied for more than six months of the reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City, and which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay. Based upon the above-referenced analysis and findings, it is the Panel's final determination that the evidence in its totality is neither sufficient nor effective in supporting either the property status claimed initially, or the alternative property status claimed subsequently.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
12th August, 2021



Vacancy Tax Review Panel

Sep 21, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00002

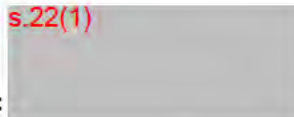
Vacancy Reference Period: 2018

Folio:

s.22(1)

Civic

Address:



The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the subject case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the Property Undergoing Redevelopment or Major Renovations Exemption pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

Arising from its detailed analysis, the Panel finds that the home owner's evidence submitted was neither sufficient nor effective in supporting the property status claimed.

The Panel further finds that the owner purchased the property in s.22(1), and in 2016 began to perform demolition/construction work without a permit. It was not until June 2017 that a permit application was submitted and the Payment Notice was issued on June 30, 2017. While the property in question had a valid permit application DB-2017-00698 throughout the 2018 Vacancy Reference Period, a permit was not issued.

The Panel notes that a significant amount of documentation was provided by the homeowner, including reports from s.22(1) communications with the Building Review Branch at the COV, communication from s.22(1) however, the Panel finds that all of these fail to establish an exemption under section 3.2 of the Empty Homes Tax Bylaw, given that no permits had been issued for redevelopment or renovation in advance of July 1, 2018.

The Panel further notes that, in submitting their reasons for requesting review, the property owner indicates that the property in question was uninhabitable and therefore did not meet the definition of a 'dwelling', which is relied upon in Section 3.2(b). Predicated on this argument, the owner therefore likens the property to a piece of vacant land, "unimproved with any dwelling units", which would then render the property exempt due to the submitted application under review.

Having considered this submission the owner the Panel rejects this argument, in consideration of the building which was clearly present on the property throughout material times, coupled with the fact that the Bylaw does not give consideration to habitability. In consideration of all of these factors, Panel renders its final determination that the property in question, on the balance of probabilities, was not unoccupied for at least six months during the vacancy reference period because it was undergoing redevelopment or major renovations with permits issued by the City, and which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

B. Hamilton and E. McCormack
Vacancy Tax Review Panel
Aug 26, 2021
ADR Institute of BC



Vacancy Tax Review Panel

Jul 14, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00003
Vacancy Reference Period: 2019

Folio: s.22(1)
Civic
Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the subject case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the REDEVELOPMENT/MAJOR RENOVATION property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw. In order to qualify for this exemption, the owner bears the burden of proof in demonstrating by way of compelling evidence that the property was unoccupied for more than six months because it was undergoing redevelopment or major renovation for which Permits had been issued by the City, and which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

In the course of its detailed analysis, the Panel finds that the home owner's evidence submitted is neither sufficient nor effective in supporting the property status claimed. In this case, the owner describes circumstances leading up to the reference period which include s.22(1) due to the COVID-19 pandemic's effect on processes. While the Panel acknowledges the owner's described hardship for the reasons cited, the Panel is unable to consider these described difficulties as a basis in evidence for a reasoned determination of exemption pursuant to Section 3.2 of the Bylaw. Rather, the Panel finds that the building permit required by the Bylaw to be in place during the subject renovation work was not in place for the required period of time within the vacancy reference period. As this is a clear and firm requirement under Section 3.2, the Panel is unable to find a corresponding basis in evidence for the exemption claimed in this case.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
12th August, 2021



Vacancy Tax Review Panel

Jul 14, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00004
Vacancy Reference Period: 2017

Folio:
Civic
Address:

s.22(1)

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the subject case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES qualify for the Tenanted property status pursuant to Section 2.2 of the Bylaw and there WAS an error made by the Citi's Review Officer in applying the Bylaw.

Arising from its detailed analysis, the Panel finds that new evidence provided by the property owner was both sufficient and effective in supporting the property status claimed, including: tenancy agreements for October 1, 2016-September 30, 2017 and October 1, 2017-September 30, 2018 between the property owner, s.22(1) RBC bank statements from June-December 2017 showing a monthly deposit from Re/Max Crest WS; a Tenant Insurance policy from Insure BC effective s.22(1) and noted as a "renewal"; an ICBC residential address search for the tenants showing s.22(1) W from 2014-01-13 to 2019-05-15; and, a property management agreement between the property owner and Re/Max Crest Realty Westside dated s.22(1), which is reasonable to believe is ongoing. This evidence, in its totality, satisfies that the property in question was tenanted for terms of at least thirty (30) days, for at least six months during the 2017 vacancy reference period.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD NOT be imposed on the property.

Review Determination: ACCEPTED

Vacancy Tax Review Panel
23rd September, 2021



Vacancy Tax Review Panel

Sep 21, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00005

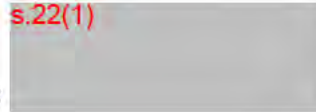
Vacancy Reference Period: 2018

Folio:

s.22(1)

Civic

Address:



The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the subject case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the PRINCIPAL RESIDENCE - PERMITTED OCCUPANT property status claimed pursuant to Section 2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw. In order to qualify for exemption under this Section, a property must have served as a registered owner or permitted occupant's principal residence for at least six months of the vacancy reference period.

Arising from its detailed analysis, the Panel finds that the homeowner's evidence submitted is neither sufficient nor effective in supporting the property status claimed. In this case, the homeowner has provided evidence in the form of a body of documentation, in support of her claim that the property served as the principal residence of s.22(1) a permitted occupant, for the 2018 reference period.

While the Panel notes that s.22(1) appears to have stayed at the property periodically during 2018, the Panel does not find the owner's considerable volume of secondary evidence to be convincing or effective, in leading the Panel to a reasoned determination that the property served as the claimed permitted occupant's principal residence for at least six months during the 2018 reference period. In addition, the Panel draws an adverse inference from the owner's apparent inability and/or unwillingness to provide even one piece of primary government-issued ID attached to the claimed permitted occupant. It is the Panel's determination that this partial s.22(1) not only fails to effectively support the exemption claimed, but rather more strongly suggests that the claimed permitted occupant was maintaining his principal residence s.22(1), throughout material times.

The Panel has taken note of the owner's detailed written submission in support of her request for exemption in this case, which contains a lengthy chronology of numerous missed communications, and an explanation addressing her lack of awareness of both Bylaw requirements and attached submission deadlines. The Panel rejects the owner's arguments in support of exemption under Section 2, predicated on any lack of knowledge or understanding of the Bylaw or any associated compliance requirements and/or submission deadlines.

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property in question served as a permitted occupant's principal residence for at least six months within the vacancy reference period.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and S. Rose
Vacancy Tax Review Panel
Aug 20, 2021
ADR Institute of BC



Vacancy Tax Review Panel

Sep 20, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00007

Vacancy Reference Period: 2019

Folio:

s.22(1)

Civic

Address:



The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the REDEVELOPMENT OR MAJOR RENOVATION property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

In the course of its review, the Panel finds that the evidence was neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City, pursuant to the governing Section of the Bylaw.

During the initial declaration, it was indicated that: "Unimproved lands without existing dwelling units, but rezoning inquiry or application or development permit is under review." A Payment Notice was submitted as the single piece of supporting evidence, for DP-2019-00283 dated April 10, 2019, for a property location of s.22(1) however the property in question and under review is s.22(1) and therefore bears no application. Additionally, a search on Google Maps shows that the property is improved with a dwelling, which jibes with the property owner's most recently submitted, reason for review: "Property was improved with dwelling, but was in unliveable conditions (unsanitary, old structure, etc.). It is unreasonable to spend money to make it liveable only to have the building teared down for redevelopment a few months later."

Based on the evidence provided, and on the balance of probabilities, I have determined that the reason the property was unoccupied for more than six months in the 2019 vacancy reference period was not because it was carrying out redevelopment or initial development of residential property that is unimproved with any dwelling units, for which a development permit application is under review by the City. To be eligible for an exemption under section 3.2(b) of the Vacancy Tax By-Law, the property must be vacant land with a development permit under review by the City by July 1, 2019. Section 3.2 of the Bylaw does not give consideration to habitability of the dwelling and it remains incumbent on the owner of the property to ensure the property does not fall into a state of disrepair.

The Panel has also considered the intention of the Bylaw, which is to return under-utilized and vacant property to the rental market for those who are living and working in Vancouver, and based on that, the Panel finds that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
B. Hamilton and S. Rose
Vacancy Tax Review Panel
Aug 26, 2021
ADR Institute of BC

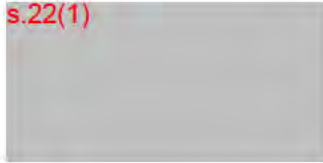


Vacancy Tax Review Panel

Sep 21, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00008

Vacancy Reference Period: 2019

Folio:

Civic

Address:

s.22(1)



The Vacancy Tax Panel ("Panel") was asked to conduct an independent adjudicative review of the above-referenced case at the request of the property owner. In accordance with Vacancy Tax Adjudication process, the above-referenced case has been subject to a detailed de novo review involving all available evidence submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption on a balance of probabilities.

Property owner claims that the Property Undergoing Redevelopment or Major Renovations exemption applies to the property in question during the vacancy reference year, here 2019. In the course of its review, the Panel has carefully examined the requirements set out in the governing Bylaw section.

In this case property owner purchased the property in question on s.22(1), with the described intent to begin redevelopment in April 2019. Despite this noted intent, the owner did not take steps to make application for a building permit until 12 July 2019.

In their submission in the course of initial-stage audit, property owner suggested that the timing around the initial building permit application was frustrated by s.22(1) attached to a destructive investigative demolition which, property owner argued, rendered the dwelling on the property in question uninhabitable. Property owner also argues that their initial estimates of probable turn-around times between permit application and issue was based upon estimates provided by s.22(1). Property owner further argues that they had no reasonable means of anticipating how long it would take to obtain required permits, and again cites pre-permit selective demolition as having prevented property owner from any viable means to rent the property in question to tenants while awaiting permit issuance.

The Panel accepts that the property owner's intent and decision-making were, in all probability, as property owner describes. However, the Panel rejects property owner's argument that the property in question should qualify for exemption under Section 3.2 because the subject dwelling unit was uninhabitable as a result of the unpermitted destructive investigative demolition undertaken prior to permit application. Section 3.2 does not contemplate the habitability of a dwelling unit in setting out conditions for exemption. Rather, the Bylaw strictly contemplates whether or not the property was unoccupied for more than six months because it was undergoing redevelopment or major renovation under permits issued by the City. It is clear that such conditions were not met here for the 2019 vacancy reference period. It is the responsibility of property owner to either bring a property into a habitable state for the purpose of residential tenancy or to apply for relevant permits in sufficient time to begin and proceed with permitted redevelopment activity.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver.

Based on that consideration and having reviewed and considered all evidence put before it in this case, and having weighed and measured it on a balance of probabilities, the Panel finds that the property in question is subject to the Vacancy Tax.

Review Determination: NOT ACCEPTED

B. Hamilton and S. Rose
Vacancy Tax Review Panel
Aug 26, 2021
ADR Institute of BC

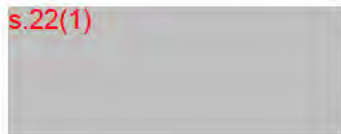


Vacancy Tax Review Panel

Sep 21, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00010

Vacancy Reference Period: 2019

Folio:

s.22(1)

Civic

Address:



The Vacancy Tax Panel ("Panel") was asked to conduct an independent adjudicative review of the above-referenced case at the request of the property owner. In accordance with Vacancy Tax Adjudication process, the above-referenced case has been subject to a detailed de novo review involving all available evidence submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption on a balance of probabilities.

Here, the property owner has attempted to claim exemption under each the Redevelopment/Major Renovations and Tenanted status.

As the to claim for exemption under the Redevelopment/Major Renovations status, the relevant subsection of Bylaw section 3.2 states

"A vacancy tax is not payable ... for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to ... a) redevelop or safely carry out major renovations to the property i) for which permits have been issued by the City...

The application of this subsection of the Bylaw requires that that relevant permits are issued by the City no later than 1 July of the vacancy reference period. Here, however, property owner's application for a salvage and abatement permit as well as a demolition permit were not submitted until 10 July of the vacancy reference year, too late for a 1 July issuance by the City for either permit.

As a result, this claim of exemption must fail.

Additionally, property owner attempted to claim that the property in question was Tenanted for at least six months of the vacancy reference period. The property in question had been tenanted earlier but the tenants who were expected to stay until end of June 2019 left the property in question in autumn 2018. The dwelling on the property in question was not rented thereafter. As a result, property owner's claim that the property was tenanted for at least six months during the vacancy reference period also must fail.

Additionally, property owner was aware that they could have occupied the property in question as their "principal residence" for at least six months of the vacancy reference period. However, property owner indicated that they did not choose to live in the property in question because of the preparatory work that was occurring in anticipation of the redevelopment.

Further, the purpose of the Bylaw is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Such purpose was not met by the property owner in this situation.

Having reviewed the considered all evidence put before it in this case, and having weighed and measured it on a balance of probabilities, the Panel finds that none of property owner's claims of exemption meet the standards set by the Bylaws, and all of property owner's claims of exemption must fail and the Vacancy Tax should be imposed on the property.

Review Determination: NOT ACCEPTED

D. Tucker and B. Hamilton
Vacancy Tax Review Panel
Aug 26, 2021
ADR Institute of BC

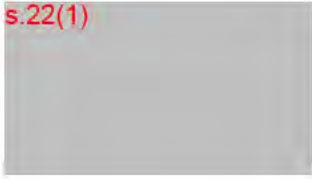


Vacancy Tax Review Panel

Sep 21, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00011

Vacancy Reference Period: 2019

Folio:

s.22(1)

Civic

Address:



In accordance with Vacancy Tax Adjudication process, the above-referenced case has been subject to a detailed de novo review involving all available evidence submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemptions on a balance of probabilities.

If a property owner declares the property as the principal residence of a Permitted Occupant, the property owner must be able to provide evidence that demonstrates that the property was used as a principal residence of the permitted occupant for at least six months of the vacancy reference period, here, 2019.

In the course of its review, the Panel has considered the governing Bylaw's definition of Principal Residence.

Here, several documents were offered to support this claim for the Permitted Occupant exemption. The s.22(1), the purported permitted occupant, shows an address in s.22(1) also owned by property owner. Since a claim for this exemption requires that a government-issued identification reflect the Permitted Occupant's address to be that of the property in question, the inability of the alleged Permitted Occupant to supply this document undermines the viability of any other documents submitted in support thereof.

As a result of the Panel's comprehensive review of all evidence, the claim that there was a Permitted Occupant at the property in question during the vacancy reference period must fail.

Property owner has also alleged that he uses this property as his Principal Residence. But, again, there is no proof to support this claim, i.e. property owner has not offered his BCDL, his BC Care Card does not reflect an address, and, again, the home insurance on the property indicates that the property in question is a "second home".

Property owner has also suggested that he is exempted by strata Rental Restrictions at the property in question. However, the rules of the strata to which Property owner refers indicates that his unit was purchased pre-restriction and is therefore not precluded from being rented so long as the rental is for at least six months. Therefore, this claim of exemption also fails.

Property owner further indicated that his claim might derive from the s.22(1) based on the s.22(1). To support this claim, property owner s.22(1) s.22(1) s.22(1), but did not offer any of the other documents required, e.g. s.22(1) s.22(1) s.22(1). Further, s.22(1) is not the "last registered owner of the residential property". As a result of the failure to offer proper documents, this claim of exemption also fails.

Property owner has further referred to the fact that the property in question is closer to his work than is s.22(1), and that the Occupancy for Full-Time Employment exemption should apply. For such exemption to apply, the claimant must not already have a principal residence in "greater Vancouver", which includes s.22(1). Since property owner has what appears to be a "principal residence" in s.22(1) the Occupancy for Full-Time Employment exemption is not available to this property owner.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the city of Vancouver. Based on that consideration, with the above-referenced analysis of the evidence, the Panel has determined that the Vacancy Tax should be imposed on the property.

Review Determination: NOT ACCEPTED

D. Tucker and B. Hamilton
Vacancy Tax Review Panel
Sep 17, 2021
ADR Institute of BC



Vacancy Tax Review Panel

Sep 21, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00012

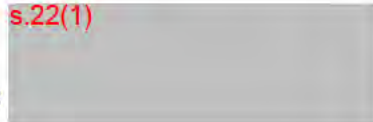
Vacancy Reference Period: 2018

Folio:

Civic

Address:

s.22(1)



The Vacancy Tax Panel ("Panel") was asked to conduct an independent adjudicative review of the above-referenced case at the request of the property owner. In accordance with Vacancy Tax Adjudication process, the above-referenced case has been subject to a detailed de novo review involving all available evidence submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemptions on a balance of probabilities.

The Panel has attempted to apply the Principal Residence - Homeowner or Principal Residence - Permitted Occupant exemptions to this situation.

In accordance with the Bylaw, a Principal Residence means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, pay bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's license, personal identification, vehicle registration and utility bills.

Any single individual cannot have more than one principal residence. In this situation, insufficient documentation has been provided (NOVUS invoices only) to support Principal Residence - Homeowner status, despite the fact that property owner has indicated that he uses the property in question routinely. However, all other documentation provided by the property owner references a PO Box s.22(1) mailing address. Since property owner has not offered sufficient evidence upon which the Panel could conclude that the property owner actually uses the property in question as a principal residence for himself, property owner's claim of the Principal Residence - Homeowner must fail.

Further, the property in question appears to be a "second home" which is defined as a home that is used occasionally or intermittently by an owner or his/her guests, or held as an investment. Such "second home" is not exempt under the Vacancy Tax Bylaw. Although it is likely that the property owner uses the property regularly, he has not established the property as his Principal Residence. As a result, it does not matter how frequently he occupies the property - even in excess of six months per year - since such usage does not qualify for an exemption from the tax.

Additionally, the Panel has considered whether there is sufficient evidence to support the Principal Residence - Permitted Occupant exemption. There is no documentation to suggest that either the property owner's s.22(1) have ever established the property in question as their principal residence. As a result, the claim of Principal Residence - Permitted Occupant must also fail.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver.

Based on that consideration, along with the review and consideration of all evidence put before it in this case, and having weighed and measured it on a balance of probabilities, the Panel finds that the Vacancy Tax should be imposed on the property in question.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
Sep 29, 2021
ADR Institute of BC

Sep 21, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00013
Vacancy Reference Period: 2017

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

This letter is to inform you that the Vacancy Tax Review Panel has concluded its review of your submitted review request and all supporting documents provided in support of your Property Status Declaration.

Based upon a review of your review request, the Vacancy Tax Review Panel has determined that your property is no longer subject to the Vacancy Tax. Your Vacancy Tax Notice will be cancelled.

If you paid the Vacancy Tax before this determination letter was issued, call 3-1-1 to start the refund process. Otherwise, no further action is required on your behalf.

Vacancy Tax Department
City of Vancouver



Vacancy Tax Review Panel

Sep 21, 2022

CONFIDENTIAL

s.22(1)



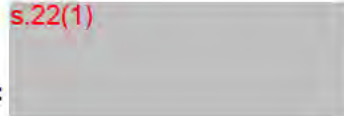
File Number: RC-2021-00014

Vacancy Reference Period: 2018

Folio: s.22(1)

Civic

Address:



The Vacancy Tax Panel ("Panel") was asked to conduct an independent adjudicative review of the above-referenced case at the request of the property owner. In accordance with Vacancy Tax Adjudication process, the above-referenced case has been subject to a detailed de novo review involving all available evidence submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption on a balance of probabilities.

Property owner is requesting an exemption based on Principal Residence - Permitted Occupant status. Here, property owner claims that s.22(1) occupied the property as a principal residence during 2018, the vacancy reference period.

The Bylaw defines "principal residence" as "the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is, generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills."

In support of this claim for the Principal Residence - Permitted Occupant exemption, property owner has submitted a number of documents pertinent to s.22(1) the claimed permitted occupant. Those documents include a BC Services card, a letter from Health Insurance BC, and an NOA, all of which indicate an address different than that of the property in question. One additional document, a BC Hydro bill, matches the name of the claimed permitted occupant and the property in question but covers a period of only three months and reflects only nominal usage. In the course of audit, property owner explained that s.22(1) did not change her mailing address because s.22(1) and s.22(1). Property owner further explained that the family was uncertain as to how long the claimed permitted occupant would be residing at the property, so the claimed permitted occupant did not change her address for CRA, banking, credit card statements, and other relevant documents that could have been offered to support property owner's claim of exemption.

Because of this lack of evidence, property owner's claim of the Principal Residence - Permitted Occupant exemption must fail.

In further correspondence, property owner asks that her request for exemption be considered on compassionate grounds, citing a lack of familiarity and understanding of Bylaw and evidentiary requirements. While the City may have internal guidelines to accommodate such a request, the Panel has no power or authority to do so.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver.

Based on that consideration and having reviewed and considered all evidence put before it in this case, and having weighed and measured it on a balance of probabilities, the Panel finds that the Vacancy Tax must be imposed on the property in question.

Review Determination: NOT ACCEPTED

G. Molnar and S. Rose
Vacancy Tax Review Panel
Aug 13, 2021
ADR Institute of BC



Vacancy Tax Review Panel

Jul 12, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00015
Vacancy Reference Period: 2019

Folio:
Civic
Address:

s.22(1)

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the Property Undergoing Redevelopment of Major Renovations Exemption pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

The evidence WAS NOT sufficient and appropriate to support the property status. In accordance with the Bylaw, "A vacancy tax is not payable under this Bylaw for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following: (a) Redevelop or safely carry out major renovations to the property: (i) for which permits have been issued by the City, and (ii) which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay."

The property was purchased in s.22(1), and therefore was exempt from the Vacancy Tax in 2018 due to Property Transfer. The property owner indicates that the property was purchased solely for the purposes of redevelopment and was in a state of disrepair when purchased from the former owners. However, the Bylaw does not give consideration to inhabitation of existing dwelling units and it is incumbent on the property owner to ensure the property is maintained in order to be occupied or tenanted as a principal residence for at least six months during the vacancy reference period. In this case, a Building Permit (BP-2019-04023) for Salvage & Abatement was not applied for until September 9, 2019. Since none of the permits were issued by July 1, 2019 the application must fail.

As a result of the facts above, we have determined that the reason the property was unoccupied for more than six (6) months during the 2019 Vacancy Reference Period was not because it was undergoing redevelopment or major renovation with permits issued by the City on or before July 1, 2019.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
27th of June, 2022

Feb 11, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00016
Vacancy Reference Period: 2019

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

-

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver



Vacancy Tax Review Panel

Sep 21, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00018

Vacancy Reference Period: 2019

Folio:

Civic

Address:

s.22(1)



The Vacancy Tax Panel ("Panel") was asked to conduct an independent adjudicative review of the above-referenced case at the request of the property owner. In accordance with Vacancy Tax Adjudication process, the above-referenced case has been subject to a detailed de novo review involving all available evidence submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption on a balance of probabilities.

Property owner claims the Property Undergoing Redevelopment or Major Renovations exemption is applicable here.

In accordance with the pertinent Bylaw, "A vacancy tax is not payable under this Bylaw for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following: (a) Redevelop or safely carry out major renovations to the property: (i) for which permits have been issued by the City, and (ii) which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay."

Here, the property owners have indicated that the property in question was rented out for approximately thirty (30) years until October 2018, when the tenant suddenly vacated the property. At that time the dwelling was allegedly in a state of disrepair, and a contractor was engaged to renovate the home. However, after surveying the property, the contractor reported the dwelling was unsafe and beyond repair; after deliberation, the property owners decided instead to redevelop the property for themselves. The planning and permitting process can be lengthy for redevelopment; however, because the Bylaw does not give consideration to the non-habitability of existing dwelling units, it is incumbent on the property owner to ensure the dwelling can be occupied or tenanted as a principal residence for at least six months during the vacancy reference period before development permits have been issued. In this case, a successful submission for a building permit was not completed until 11 December 2020. No permits were issued during the 2019 vacancy reference period.

In addition, the exemption does not apply to properties where work has been performed without a permit.

Therefore, the reason the property was unoccupied for more than six (6) months during the 2019 Vacancy Reference Period was not because it was undergoing redevelopment or major renovation with permits issued by the City on or before 1 July 2019. As a result, the Property Undergoing Redevelopment or Major Renovations exemption does not apply.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver.

Based on that consideration and having reviewed and considered all evidence put before it in this case, and having weighed and measured it on a balance of probabilities, the Panel finds that the property in question is subject to the Vacancy Tax.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
Sep 29, 2021
ADR Institute of BC



Vacancy Tax Review Panel

Sep 21, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00019

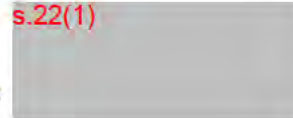
Vacancy Reference Period: 2018

Folio:

s.22(1)

Civic

Address:



In accordance with Vacancy Tax Adjudication process, the above-referenced case has been subject to a detailed de novo review involving all available evidence submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption on a balance of probabilities.

Here the property owner claims that the property in question was either Tenanted or the Principal Residence of a Permitted Occupant for an accumulated occupancy of at least six months during the vacancy reference period.

The property owner originally submitted a large volume of material in support of her claim that the property in question was occupied by three separate individuals during the vacancy reference period and that all were permitted occupants. However, in the course of audit and latter complaint review, it was clarified that the property owner was in fact claiming that the property was eligible for exemption as Tenanted for two of these three separate occupancies, and that it was eligible for exemption as Principal Residence-Permitted Occupant for the third occupancy.

In respect of the first occupancy attached to the owner's claim of exemption as Tenanted, property owner claimed that the property in question was occupied by tenant s.22(1) [REDACTED]. In consideration of the evidence submitted in support of the first occupancy, the Panel accepts the owner's claim that the property was occupied by paying tenant s.22(1) [REDACTED] for the period claimed, i.e. three months of the vacancy reference period.

In respect of the second occupancy attached to the owner's claim of exemption as Principal Residence - Permitted Occupant, the owner claimed that the property in question was occupied by permitted occupant s.22(1) [REDACTED].

There is no evidence this occupant was paying bills or receiving mail at the property in question. Rather, it is apparent that the one-month occupant was on a holiday or a visit and had a principal residence elsewhere.

In consideration of the evidence attached to this second claimed occupancy, the Panel accepts that the claimed permitted occupant stayed at the property for the period stated. However the evidence regarding this occupancy does not satisfy the Panel, on a balance of probabilities, that the property in question served as the claimed permitted occupant's principal residence during the period stated.

In respect of the third occupancy attached to the owner's claim of exemption as Tenanted, the owner has claimed that the property was occupied by tenant s.22(1) [REDACTED]. In consideration of the evidence submitted in support of this third occupancy, the Panel accepts the property owner's claim that the property in question was occupied by paying tenant s.22(1) [REDACTED] for the period claimed, i.e. one month of the vacancy reference period.

Having reviewed and considered all of the evidence in this case, and having weighed and measured it on a balance of probabilities, the Panel finds the owner's evidence insufficient to support a claim of Principal Residence - Permitted Occupant attached to the second occupancy as outlined above. The Panel further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver.

Based on that consideration, and having reviewed and considered all evidence put before it in this case, and having weighed and measured it on a balance of probabilities, the Panel finds that the property in question is subject to the Vacancy Tax.

Review Determination: NOT ACCEPTED

G. Molnar and S. Rose
Vacancy Tax Review Panel
Aug 13, 2021
ADR Institute of BC



Vacancy Tax Review Panel

Sep 20, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00020
Vacancy Reference Period: 2019

Folio: s.22(1)
Civic
Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the REDEVELOPMENT OR MAJOR RENOVATION property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

A vacancy tax is not payable under this Bylaw for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to ... redevelop or safely carry out major renovations to the property for which permits have been issued by the City. The second section of the Bylaw, pertinent to diligence in exercising the permit, is not at issue here.

The application of the Bylaw requires that, if a property with an existing dwelling was undergoing redevelopment or major renovation, the building or development permit must be issued prior to 1 July of the applicable vacancy period, here 2019. In this instance, after work done by the homeowner was halted by a Stop Work notice issued by the City, homeowner applied for a permit on either 15 May 2019 or 28 June 2019 - the date is unclear. However, the Development and Building permit was not issued until 6 August 2019, definitely beyond the 1 July date required by the application of the Bylaw. As a result, homeowner's claim of exemption due to the Property Undergoing Redevelopment or Major Renovations must fail.

Homeowner has attempted to argue that they were unable to cause the property in question to be occupied because of the Stop Work notice issued by the City on 16 April 2019. The Court Order exemption offered by the Bylaw requires that the property must be unoccupied for more than six months during the vacancy reference period solely because a court order, court proceedings or order of a government authority prohibits its occupancy. The Stop Work order does not meet any of the three criteria stated. As a result, homeowner's attempt to claim a Court Order exemption must also fail.

Review Determination: NOT ACCEPTED

B. Hamilton and D. Tucker
Vacancy Tax Review Panel
Jun 10, 2022
ADR Institute of BC

Sep 21, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00023
Vacancy Reference Period: 2017

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

This letter is to inform you that the Vacancy Tax Review Panel has concluded its review of your submitted review request and all supporting documents provided in support of your Property Status Declaration.

Based upon a review of your review request, the Vacancy Tax Review Panel has determined that your property is no longer subject to the Vacancy Tax. Your Vacancy Tax Notice will be cancelled.

If you paid the Vacancy Tax before this determination letter was issued, call 3-1-1 to start the refund process. Otherwise, no further action is required on your behalf.

Vacancy Tax Department
City of Vancouver

Sep 21, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00024
Vacancy Reference Period: 2017

Folio: s.22(1)
Civic
Address:

RE: Vacancy Tax (Empty Homes Tax) Review Determination

This letter is to inform you that the Vacancy Tax Review Panel has concluded its review of your submitted review request and all supporting documents provided in support of your Property Status Declaration.

Based upon a review of your review request, the Vacancy Tax Review Panel has determined that your property is no longer subject to the Vacancy Tax. Your Vacancy Tax Notice will be cancelled.

If you paid the Vacancy Tax before this determination letter was issued, call 3-1-1 to start the refund process. Otherwise, no further action is required on your behalf.

Vacancy Tax Department
City of Vancouver



Vacancy Tax Review Panel

Sep 21, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00027

Vacancy Reference Period: 2018

Folio:

Civic

Address:

s.22(1)



The Vacancy Tax Panel ("Panel") was asked to conduct an independent adjudicative review of the above-referenced case at the request of the property owner. In accordance with Vacancy Tax Adjudication process, the above-referenced case has been subject to a detailed de novo review involving all available evidence submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption on a balance of probabilities.

Property owner claims that the Principal Residence - Permitted Occupant exemption applies to the property in question for the vacancy reference year, here 2018. In accordance with the Bylaw, a Principal Residence means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, pay bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's license, personal identification, vehicle registration and utility bills.

In this situation, however, property owner and/or claimed permitted occupant failed to provide a piece of primary evidence to support the use of this property as a principal residence. Although a driver's license was provided as supporting documentation, it references s.22(1) as the address; this is not the address of the property in question. Other supporting documentation was provided, i.e. more than six months' utility bills (BC Hydro & Fortis BC) demonstrating regular usage for the vacancy reference period, an insurance policy naming both s.22(1) and a number of delivery receipts for purchases made by property owner at the end of December 2018. However, such documents, in their totality, fail to sufficiently establish that the property in question was utilized as a principal residence by a permitted occupant for at least six (6) months of the 2018 vacancy reference period, as per Section 2 of the Vacancy Tax Bylaw. Further, it appears to be admitted that the property in question was not the principal residence of the claimed permitted occupant during the vacancy reference year. Claimed permitted occupant maintained a residence in s.22(1) and perhaps occasionally spent time at the property in question. Given these facts, the property in question is considered to be a "second home" which is defined as a home that is used occasionally or intermittently by an owner or his/her guests, or held as an investment. Second homes are not exempt under the Vacancy Tax Bylaw.

There was a request for more, direct, primary evidence by the Review Officer, but none was offered.

The Panel finds that the submitted evidence is insufficient to permit a conclusion that the home was the place that the claimed permitted occupant made her home and from which she conducted her daily affairs for at least six months during the vacancy reference period.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver.

Based on that consideration and having reviewed and considered all evidence put before it in this case, and having weighed and measured it on a balance of probabilities, the Panel finds that the property in question is subject to the Vacancy Tax.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
Sep 29, 2021
ADR Institute of BC

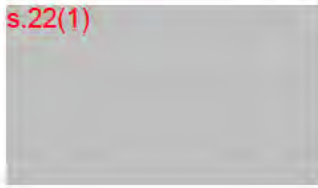


Vacancy Tax Review Panel

Sep 20, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00029

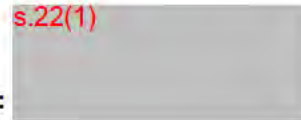
Vacancy Reference Period: 2019

Folio:

Civic

Address:

s.22(1)



The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the REDEVELOPMENT OR MAJOR RENOVATION property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

In the course of its review, the Panel finds that the evidence was neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City, pursuant to the governing Section of the Bylaw.

While the property in question satisfies requirement (a)(i) for the exemption - DB451806 was issued on April 7, 2016 - the file has been reviewed by the Chief Building Official and does not comply with requirement (a)(ii). In a communication dated January 27, 2021, from the Chief Building Official, he notes: "I, Shawn Dyste, Building Inspections Supervisor, have reviewed evidence and information received as part of the Vacancy Tax Compliance processes, as well as reviewed internal City of Vancouver development and building information on record for this property and confirm that this property does not qualify for the vacancy tax exemption for the 2019 vacancy tax reference period 3.2 (a) on the basis that: The development or major renovations, in my opinion, were not being carried out diligently and without unnecessary delay."

Furthermore, the CBO outlines the following reasons for his decision: DB451806 was issued April 7, 2016 and completed on April 22, 2020. The Insulation and Vapor Barrier inspections are the last building inspections until final inspection, and those were completed June 2017. In addition to a number of other progress inspections, the final inspection was initially booked for May 12, 2019, however was cancelled and not subsequently completed until April 22, 2020, four (4) years after the building permit was issued and 22 months after the estimated completion date noted at the building progress inspection on December 5, 2017.

Therefore, the Panel has determined that the reason the property was unoccupied for more than six (6) months during the 2019 Vacancy Reference Period was not because it was undergoing redevelopment or major renovation with permits issued by the City, which, in the opinion of the Chief Building Official, were being carried out diligently and without unnecessary delay.

In the course of its review, the Panel has also considered that the intention of the bylaw is to return under-utilized or vacant property to the long-term rental market for individuals and families living and working in Vancouver and based on that, I believe Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

B. Hamilton and D. Tucker
Vacancy Tax Review Panel
Sept 17, 2021
ADR Institute of BC



Vacancy Tax Review Panel

Sep 20, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00030
Vacancy Reference Period: 2019

Folio: s.22(1)
Civic
Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the REDEVELOPMENT OR MAJOR RENOVATION property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

In the course of its review, the Panel finds that the evidence was neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City, pursuant to the governing Section of the Bylaw.

The Panel notes that, in this case, the subject renovations cost approximately \$5000. The Chief Building Official has determined that this renovation is “minor”, not major. It appears that this property, from which tenants moved in late 2018, was converted to a “show home” for the larger property in this building. The building permit was issued on 28 May 2019, and the work was completed on 13 September 2019. It appears that the unit in question was not renovated to be a rental.

Because the address in question was not the principal residence of a homeowner or permitted occupant or tenant for at least six months during 2019, and because the renovation is considered “minor” rather than “major”, Homeowner’s claim of exemption must fail.

Review Determination: NOT ACCEPTED

D. Tucker and B. Hamilton
Vacancy Tax Review Panel
Sept 17, 2021
ADR Institute of BC



Vacancy Tax Review Panel

Sep 20, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00031
Vacancy Reference Period: 2019

Folio: s.22(1)
Civic
Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the REDEVELOPMENT OR MAJOR RENOVATION property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

In the course of its review, the Panel finds that the evidence was neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City, pursuant to the governing Section of the Bylaw.

The Panel further notes that a s.22(1) was issued for the property on October 4, 2007, to the previous owners, and although the property remained in the same condition up until which time it was purchased in July 2017 by the current owners, they have had ample time and notices from the City (including s.22(1)) to apply for and secure the necessary permits. It was not until December 12, 2019 that an application for development was submitted to the City of Vancouver for review. That timeline does not indicate that the property owners were diligently pursuing the order without unnecessary delay.

Therefore, based on the evidence provided, the Panel has determined that the reason the property was unoccupied for more than six (6) months during the 2019 vacancy reference period was not because it was undergoing redevelopment or major renovation with permits issued by the city. In order to be eligible for this exemption, permits must have been issued on or before July 1, 2019.

The Panel has also considered the intention of the Bylaw, which is to return vacant or under-utilized properties to the long-term rental market for individuals and families who are living and working in Vancouver, and based on that, I believe Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
Sept 29, 2021
ADR Institute of BC



Vacancy Tax Review Panel

Sep 20, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00032
Vacancy Reference Period: 2019

Folio: s.22(1)
Civic
Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES qualify for the PRINCIPAL RESIDENCE - HOMEOWNER property status claimed pursuant to Section 2.2 of the Bylaw and there WAS an error made by the Review Officer in applying the Bylaw.

In the Panel's view, the Review Officer erred in diminishing the weight to be given to the s.22(1) [redacted]. The Panel considers it most likely that the letter, though issued in 2020, was a reference to a record of "current semester 2019" and related to information as it was in 2019, including the address for the student at that time; this address. This serves to bolster the homeowner's claim for principal residency at that address during the reference year 2019.

The homeowner has failed to produce much of the documentation normally available to a "principal residence" claimant. It should be noted that the tenant claims to live a rather spartan lifestyle, with none of the normal trappings like credit cards, internet accounts, bank accounts, or driver's license; documents that confirm his where he usually lives. That claim is a pivotal one in this matter. It determines whether the lack of documentary evidence in this case is justified.

The Panel appreciates that the City's tax review system is not empowered to conduct the investigation necessary to fully test and corroborate the homeowner's claim, for example: to compel production of evidence from government agencies like the Motor Vehicles Branch to determine whether the homeowner actual does have a document like a driver's licence but is simply not producing it.

In the circumstances of this case and having regard to the various corroborative evidence, like the concierge and building manager notes and, particularly, the Statutory declaration of the homeowner, the benefit of the doubt has to fall on his side. This homeowner has a reasonable explanation for the significant lack of the documentation normally looked to in the determination of the question of "principal residence." The documentation he did provide is sufficient evidence in the circumstances.

Based on its review, the Panel finds that the evidence WAS sufficient and appropriate to support the property status.

Review Determination: ACCEPTED

G. Molnar and B. Hamilton
Vacancy Tax Review Panel
Sept 29, 2021
ADR Institute of BC

Sep 21, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00033
Vacancy Reference Period: 2017

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

This letter is to inform you that the Vacancy Tax Review Panel has concluded its review of your submitted review request and all supporting documents provided in support of your Property Status Declaration.

Based upon a review of your review request, the Vacancy Tax Review Panel has determined that your property is no longer subject to the Vacancy Tax. Your Vacancy Tax Notice will be cancelled.

If you paid the Vacancy Tax before this determination letter was issued, call 3-1-1 to start the refund process. Otherwise, no further action is required on your behalf.

Vacancy Tax Department
City of Vancouver



Vacancy Tax Review Panel

Sep 20, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00034

Vacancy Reference Period: 2019

Folio: s.22(1)

Civic

Address:



The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the REDEVELOPMENT OR MAJOR RENOVATION property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

In the course of its review, the Panel finds that the evidence was neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City, pursuant to the governing Section of the Bylaw.

In 2019 the property had a building on it. In order to meet the exemption under section 3.2(a), the residential property must be unoccupied for more than six months during the vacancy reference period in order to redevelop or safely carry out major renovations to the property for which permits have been issued by the City and which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay.

The owner has taken the position that extenuating circumstances apply to the property being vacant in 2019. The owner purchased the property in s.22(1). Building permits were applied for in 2019, but no building permits were issued until 2020. The extenuating circumstances relied upon by the owner include retaining a sub-contractor to perform remediation on the property. The owner advises that the

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s.22(1)

The owner also takes the position that there were delays in the builder licensing application. The owner also considered that some of the owner's previous experiences with other municipalities about building and development did not apply to the process in Vancouver. Notwithstanding these arguments, the Panel finds that none of these considerations change the fact that the requirements of a permitted exemption have not been met.

The Panel has also considered the intent of the Bylaw, which is to make under-utilized properties available for the rental market in Vancouver. Accordingly, it is the Panel's determination that the Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

E. McCormack and D. Tucker
Vacancy Tax Review Panel
Sept 23, 2021
ADR Institute of BC



Vacancy Tax Review Panel

Sep 20, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00039

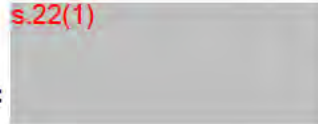
Vacancy Reference Period: 2017

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s.22(1)



The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the PRINCIPAL RESIDENCE - PERMITTED OCCUPANT property status claimed pursuant to Section 2.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

In order to successfully claim the Principal Residence - Permitted Occupant exemption from the Vacancy Tax, the Permitted Occupant must be shown to have used the address in question as their "principal residence" for at least six months of the vacancy reference period, here 2017.

The Panel notes that "Principal Residence" means the usual place where an individual lives, makes their home and conducts their daily affairs including, but not limited to, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, tax and insurance including but not limited to income tax returns, Medical Services Plan documents, driver's license, personal identification, vehicle registration and utility bills.

In order to support the claim, the Permitted Occupant must show a piece of government-issued identification, e.g. a BC driver's license, ID card, or services card as well as three of any of the following, i.e. ICBC vehicle insurance and registration, MSP invoice, utility bill at the address in question, correspondence from government authority regarding receipt of benefits like pension, unemployment, housing or other document supporting occupancy as a principal residence for more than 180 days of 2017. None of the documents listed in this paragraph were offered to support Homeowner's claim of exemption.

Homeowner states in correspondence that s.22(1) was in and out of the address in question during the vacancy reference year, doing minor renovations to the address while the Homeowner s.22(1) s.22(1) Homeowner has not been able to show that the Permitted Occupant actually occupied the address in question for more than 180 days during 2017.

The Panel has also considered the Homeowner's complaints citing that she did not receive notice of her need to address the requirements of the Vacancy Tax because the City of Vancouver did not send notices to a proper address. Although Homeowner s.22(1) s.22(1) Homeowner is still required to keep abreast of the City's requirements as they pertain to homeowners in the City of Vancouver.

It is for the reasons stated above that the Homeowner's claim of exemption based on a Permitted Occupant for 2017 must fail.

Review Determination: NOT ACCEPTED

B.Hamilton and D.Tucker
Vacancy Tax Review Panel
Sept 23, 2021
ADR Institute of BC



Vacancy Tax Review Panel

Sep 22, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00042
Vacancy Reference Period: 2017

Folio: s.22(1)
Civic
Address:

At the request of a property owner The Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Review Panel has determined that the property DOES NOT qualify for the Property Undergoing Redevelopment or Major Renovations exemption claimed pursuant to Section 3.2 of the Bylaw, and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In accordance with Section 3.2 of the Bylaw: "A vacancy tax is not payable under this Bylaw for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following: (a) Redevelop or safely carry out major renovations to the property: (i) For which permits have been issued by the City, and (ii) Which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay, or; (b) Carry out either redevelopment or initial development of residential property that is unimproved with any dwelling units, or the rehabilitation and conservation of heritage property.

The Bylaw does not give consideration to 'uninhabitable dwellings.' It is apparent from the purpose of the Bylaw (see below) that it is incumbent on the property owner(s) to ensure the property is maintained and occupied in order to avoid being taxed under the Bylaw. In accordance with this purposive approach to the interpretation of the Bylaw, an uninhabitable dwelling remains a dwelling.

Conclusion

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective to determine that the property in question meets the requirements set out in Sections 2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

B. Hamilton and G. Molnar
Vacancy Tax Review Panel
21st September, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 20, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00043
Vacancy Reference Period: 2018

Folio: s.22(1)
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Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the REDEVELOPMENT OR MAJOR RENOVATION property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

In the course of its review, the Panel finds that the evidence was neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City, pursuant to the governing Section of the Bylaw.

Based its review, the Panel finds that the evidence WAS NOT sufficient and appropriate to support the property status. Although the property owners diligently pursued a rezoning enquiry and application for the property in question throughout the 2018 vacancy reference period, that in and of itself does not exempt the property from the vacancy tax, as the property was improved with dwellings and therefore section 3.2(b) does not apply. The Bylaw does not give consideration to inhabitability and it is incumbent on the property owner(s) to ensure that the existing building is habitable and can be occupied until which time a development permit has been issued by the City.

Therefore, based on the evidence provided, the Panel has determined that the reason the property was unoccupied for more than six (6) months during the 2019 vacancy reference period was not because it was undergoing redevelopment or major renovation with permits issued by the city. In order to be eligible for this exemption, permits must have been issued on or before July 1, 2018.

The Panel has also considered the intention of the Bylaw, which is to return vacant or under-utilized properties to the long-term rental market for individuals and families who are living and working in Vancouver, and based on that, the Panel finds that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
B. Hamilton and S. Rose
Vacancy Tax Review Panel
Dec 16, 2021
ADR Institute of BC



Vacancy Tax Review Panel

Sep 20, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00045
Vacancy Reference Period: 2019

Folio: s.22(1)
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Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the PRINCIPAL RESIDENCE - PERMITTED OCCUPANT property status claimed pursuant to Section 2.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

In order to successfully claim the Principal Residence - Permitted Occupant exemption from the Vacancy Tax, the Permitted Occupant must be shown to have used the address in question as their "principal residence" for at least six months of the vacancy reference period.

Although both Homeowner and permitted Occupant claim that Permitted Occupant moved into the property in question on 1 June 2019, the Panel finds that there is no evidence to support such claim. For example, the claiming parties have submitted s.22(1) but none show an address. Hydro bills offered show dates in 2019 but have no name or address noted on the pages submitted.

However, ICBC shows that Permitted Occupant changed the address on her BC Driver's License to the address in question but not until 1 August 2019. In addition, an MSP address change actually shows "date of move September 1 2019". No further documents were offered to support the claim.

As a result, the Panel finds that neither Homeowner nor Permitted Occupant has offered sufficient evidence to prove that Permitted Occupant treated the address in question as her "principal residence" for at least six months during 2019. Therefore, it is the Panel's final determination that the Homeowner must pay the Vacancy tax.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
B. Hamilton and D. Tucker
Vacancy Tax Review Panel
Aug 26, 2021
ADR Institute of BC



Vacancy Tax Review Panel

Jul 14, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00046
Vacancy Reference Period: 2018

Folio: s.22(1)
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Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the PRINCIPAL RESIDENCE - OWNER property status claimed pursuant to Section 2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw. In the course of its review, the Panel took note that the claiming owner has also declared a separate property (attached to Civic address s.22(1)) to be their principal residence, in respect of the same reference period. In addition, the owner has submitted evidence in the form of a sworn Affidavit stating that the property served as an office during the reference period. The owner goes on to suggest that the property was incorrectly classified by B.C. Assessment, and that it should be exempt from the Vacancy Tax Bylaw arising from its actual status as an office space.

In consideration of the evidence and argument submitted by the owner in this case, The Panel finds that the property in question was clearly used as an office and place of business at material times during the reference period. However, the fact that the property served as an office during the reference period does not, in-and-of itself, exempt the property from the Vacancy Tax. Rather, the Panel recognizes that it is incumbent upon an owner of Class 1 residential property to ensure that the property is classed appropriately. On review of all evidence in its totality, and having weighed it on a balance of probabilities, the Panel finds that the subject Class 1 residential property does not qualify for exemption under the Bylaw.

On review of all evidence in its totality, and having weighed it on a balance of probabilities, the Panel finds that the subject Class 1 residential property does not qualify for exemption under the Bylaw.

In the course of its analysis, the Panel has also considered the intent of the Bylaw, which is to return vacant and underutilized properties to the long term rental market for persons living and working in Vancouver. Based on that intent, combined with its above-referenced analysis of the evidence, it is the Panel's final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
17th December, 2021



Vacancy Tax Review Panel

May 31, 2022

CONFIDENTIAL

s.22(1)

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File Number: RC-2021-00048
Vacancy Reference Period: 2017

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s.22(1)

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This letter is to inform you that the Vacancy Tax Review Panel has concluded its review of your submitted review request and all supporting documents provided in support of your Property Status Declaration.

Based upon a review of your review request, the Vacancy Tax Review Panel has determined that your property is no longer subject to the Vacancy Tax. Your Vacancy Tax Notice will be cancelled.

If you paid the Vacancy Tax before this determination letter was issued, call 3-1-1 to start the refund process. Otherwise, no further action is required on your behalf.

Vacancy Tax Review Panel

Aug 08, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00049
Vacancy Reference Period: 2019

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The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES qualify for the PRINCIPAL RESIDENCE - OWNER property status claimed pursuant to Section 2 of the Bylaw and there WAS an error made by the City's Review Officer in applying the Bylaw. The Panel notes that, in order to qualify for exemption under this Section, the subject property must have been occupied by a registered owner or permitted occupant for at least six months of the vacancy reference period.

In the course of its detailed analysis, the Panel finds that the claiming owner initially failed to file a declaration, but then later amended this failure by declaring that the property served as the owner's principal residence throughout the entire subject vacancy reference period. While the Panel notes that there were delays in the owner's provision of required primary and secondary documentation, the Panel finds that the primary documentation provided in the form of a valid BCID card and homeowner's insurance policy which connect the owner to the property for a period of time encapsulating the minimum six months of the reference period to be compelling evidence in support of the property status claimed.

While the Panel also notes initial concerns cited by the City's Review Officer about insufficient documentation provided in earlier-stage review, the Panel assigns significant weight to the owner's later submissions of primary and secondary documentation that are found to duly support principal residence by the owner at the property. Overall, the Panel finds the owner's evidence in support of the claimed exemption to be both reasonable and credible in the circumstances.

On a preponderance of the evidence submitted in this case, in its totality, the Panel finds the owner's evidence to be both compelling and effective in leading the Panel to a reasoned determination that the subject property was occupied by a registered owner for at least six months of the 2019 vacancy reference period. Flowing from this determination, the Panel further finds that the evidence WAS both sufficient and effective in supporting the property status claimed.

In the course of its review, the Panel has also considered the intent of the Bylaw, which is to return vacant and underutilized properties to the long term rental market for persons living and working in Vancouver. Based on that intent, in combination with the above-referenced evidentiary analysis, it is the Panel's final determination that Vacancy Tax SHOULD NOT be imposed on the property.

Review Determination: ACCEPTED

Vacancy Tax Review Panel
16th December, 2021

Nov 01, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00051
Vacancy Reference Period: 2019

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RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- Upon review of the information and supporting documents provided pursuant to Section 6.12 of the Vacancy Tax Bylaw No. 11674, that there is insufficient/inappropriate evidence to support the Property Undergoing Redevelopment or Major Renovations property status for 2019.
In accordance with the Bylaw, "A vacancy tax is not payable under this Bylaw for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following: (a) Redevelop or safely carry out major renovations to the property: (i) for which permits have been issued by the City, and (ii) which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay."
A Development Permit was not applied for until July 10, 2019. Therefore, we have determined that the reason the property was unoccupied for more than six (6) months during the 2019 Vacancy Reference Period was not because it was undergoing redevelopment or major renovation with permits issued by the City.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

Aug 08, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00053
Vacancy Reference Period: 2019

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The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the PRINCIPAL RESIDENCE - HOMEOWNER property status claimed pursuant to Section 2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw. In order to qualify for exemption under this Section, the property must have served as the principal residence of a registered owner or permitted occupant for at least six months within the vacancy reference period.

In the course of its detailed analysis, the Panel finds that the evidence was neither sufficient nor effective in supporting the property status claimed. While the Panel acknowledges the claiming homeowner's evidence (including witness affidavits) attesting that she occupied the subject property during the reference period, the Panel finds that such evidence of periodic occupancy throughout the reference period does not, in-and-of itself, prove that the property served as the owner's principal residence for the required minimum six months.

The Panel further notes that the governing Bylaw defines "principal residence" as "the usual place where an individual lives, makes his or her home, and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes... including, without limitation, income tax returns, medical services plan documentation, drivers licences, personal identification, vehicle registration and utility bills and, for the purpose of this Bylaw, a person can have only one principal residence".

On a preponderance of all evidence submitted by the Parties, the Panel finds the evidence in its totality more strongly suggests that the claiming owner's principal residence is elsewhere, and that the subject property serves as a second home. Of note, the owner has not provided any primary identification, insurance documents, or vehicle registration tying her to the subject property, from which the Panel must draw an adverse inference in this case.

In the course of its review, the Panel has also considered the fact that this complaint does appear to feature elements that raise the risk of the file overall. The Panel has further considered the intent of the Bylaw, which is to return vacant and underutilized properties to the long term residential rental market, for persons living and working in Vancouver. Based on that intent, combined with the above-referenced evidentiary review, it is the Panel's final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED
Vacancy Tax Review Panel - 16th December, 2021

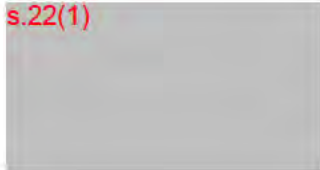


Vacancy Tax Review Panel

Sep 14, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00056

Vacancy Reference Period: 2019

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The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the TENANTED property status claimed pursuant to Section 2.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In the course of its detailed analysis, the Panel finds that the claiming owner's evidence presented was neither sufficient nor effective in supporting the property status claimed. Rather, the Panel finds that the owner's evidence more strongly supports a finding that the property was subject to a corporate tenancy involving tenants that were not at arms-length.

The Panel further notes that the property was also subject to VRP Assessment for 2018 which featured a successful outcome. At that time, the owner was provided with an advisory along with the City's determination letter, clearly explaining the amendment of Section 2.2(b) of the Vacancy Tax Bylaw requiring that effective 12 March 2019 residential property is considered to be unoccupied when it is not occupied for residential purposes by an arms-length tenant under a tenancy agreement, or by an arms-length subtenant under a sublease agreement. The Bylaw goes on to define "arms length" as a tenant or subtenant who is not related to the registered owner by blood, marriage, adoption or common-law partnership, is not a corporation of which an individual registered owner is a director, officer or shareholder, and is not a director, officer, or shareholder of an incorporated registered owner, except that if it is determined that non-arms length parties are treating the tenancy or subtenancy as if it was arms-length, then it will be deemed to be at arms-length. If your property continues to be tenanted to an arms-length tenant, it may be considered unoccupied as per Section 2.2(b) of the Vacancy Tax Bylaw for future VRPs.

Based upon the above-referenced historical communication between the Parties, the Panel finds that the owner was duly on notice, at material times, of both the Amendment and their risks in failing to take steps to bring themselves within the requirements of same Amendment.

In the course of its review, the Panel has also considered the possibility that the property may have qualified for alternative exemptions PRINCIPAL RESIDENCE-OWNER pursuant to Section 2 and OCCUPANCY FOR FULL TIME EMPLOYMENT pursuant to Section 3.6. However, it is the Panel's determination that the evidence provided by the owner does not support a finding that the property served as his principal residence for a minimum of six months within the reference period.

The Panel further finds that the evidence does not adequately support that the property was occupied for at least six months during the reference period because the registered owner worked in Greater Vancouver. The Panel has also considered the intent of the Bylaw, which is to return vacant and underutilized residential properties to the long term rental market for persons living and working in Vancouver. Based on that intent, in combination with the above-referenced evidentiary review, it is the Panel's final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Panel
17th December, 2021



Vacancy Tax Review Panel

Aug 08, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00057

Vacancy Reference Period: 2018

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The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the COURT ORDER property status claimed pursuant to Section 3.7 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw. In order to qualify for this exemption, the property must have been unoccupied for more than six months during the vacancy reference period because a court order, court proceedings or order of a governmental authority prohibits its occupancy, provided that the court proceedings or any other conditions or requirements set out in any court order or order of a government authority are being diligently pursued without unnecessary delay by the registered owner and within stated timelines.

In the course of its detailed analysis, the Panel finds that the owner's evidence submitted was neither sufficient nor effective in supporting the property status claimed. On careful review of the evidence, the Panel takes note that the owner has argued exemption based upon the suggestion that ongoing

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In consideration of this

argument, the Panel takes particular note of an s.22(1)

which specifically states that the registered owners shall continue to enjoy their ordinary rights to use and possess the property, pending disposition of the Action. The Panel further notes that the Order specifically allows for tenancy and also authorizes sale of the property, and there was also allowance for improvements made to the property with the permission of the Director of Civil Forfeiture. It is noted that the Order does not preclude occupancy of the subject residential property in respect of the reference period.

Based its review of all documentation, the Panel finds that the reason this property was unoccupied for more than six months during 2018 was not because a court order, court proceedings or order of a governmental authority prohibited its occupancy.

The Panel has also considered the intent of the Bylaw, which is to return vacant and underutilized properties to the long term rental market, for persons living and working in Vancouver. Based on that intent, in combination with the above-referenced evidentiary review, it is the Panel's final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
17 December 2021



Vacancy Tax Review Panel

Aug 08, 2022

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File Number: RC-2021-00058
Vacancy Reference Period: 2018

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The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the COURT ORDER property status claimed pursuant to Section 3.7 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw. In order to qualify for this exemption, the property must have been unoccupied for more than six months during the vacancy reference period because a court order, court proceedings or order of a governmental authority prohibits its occupancy, provided that the court proceedings or any other conditions or requirements set out in any court order or order of a government authority are being diligently pursued without unnecessary delay by the registered owner and within stated timelines.

In the course of its detailed analysis, the Panel finds that the owner's evidence submitted was neither sufficient nor effective in supporting the property status claimed. On careful review of the evidence, the Panel takes note that the owner has argued exemption based upon the suggestion that ongoing

s.22(1)

. In consideration of this

argument, The Panel takes particular note of an s.22(1)

s.22(1), which specifically states that the registered owners shall continue to enjoy their ordinary rights to use and possess the property, pending disposition of the Action. The Panel further notes that the Order specifically allows for tenancy and also authorizes sale of the property, and there was also allowance for improvements made to the property with the permission of the Director of Civil Forfeiture. The Panel further notes that the Order does not preclude occupancy of the subject residential property in respect of the reference period.

Based on its detailed review, the Panel finds that the reason this property was unoccupied for more than six months during 2018 was not because a court order, court proceedings or order of a governmental authority prohibited its occupancy.

The Panel has also considered the intent of the Bylaw, which is to return vacant and underutilized properties to the long term rental market, for persons living and working in Vancouver. Based on that intent, along with the above-referenced evidentiary review, it is the Panel's final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
17 December 2021



Vacancy Tax Review Panel

Aug 08, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00059
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the COURT ORDER property status claimed pursuant to Section 3.7 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw. In order to qualify for this exemption, the property must have been unoccupied for more than six months during the vacancy reference period because a court order, court proceedings or order of a governmental authority prohibits its occupancy, provided that the court proceedings or any other conditions or requirements set out in any court order or order of a government authority are being diligently pursued without unnecessary delay by the registered owner and within stated timelines.

In the course of its detailed analysis, the Panel finds that the owner's evidence submitted was neither sufficient nor effective in supporting the property status claimed. On careful review of the evidence, the Panel takes note that the owner has argued exemption based upon the suggestion that ongoing

s.22(1)

s.22(1)

In consideration of this

argument. The Panel takes particular note of an s.22(1)

s.22(1)

which specifically states that the registered owners shall continue to enjoy their ordinary rights to use and possess the property, pending disposition of the Action. The Panel further notes that the Order specifically allows for tenancy and also authorizes sale of the property, and there was also allowance for improvements made to the property with the permission of the Director of Civil Forfeiture. The Panel further notes that the Order does not preclude occupancy of the subject residential property in respect of the reference period.

Based on its detailed review, the Panel finds that the reason this property was unoccupied for more than six months during 2018 was not because a court order, court proceedings or order of a governmental authority prohibited its occupancy.

The Panel has also considered the intent of the Bylaw, which is to return vacant and underutilized properties to the long term rental market, for persons living and working in Vancouver. Based on that intent, along with the above-referenced evidentiary review, it is the Panel's final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
17 December 2021



Vacancy Tax Review Panel

Aug 08, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00060
Vacancy Reference Period: 2020

Folio:
Civic
Address:

s.22(1)

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all the evidence, with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the Property Undergoing Redevelopment of Major Renovations Exemption pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

In accordance with the Bylaw, a vacancy tax is not payable for a parcel of residential property if the residential property was unoccupied for more than six (6) months during the vacancy reference period in order to do one or more of the following: (b) Carry out either redevelopment or initial development of residential property that is unimproved with any dwelling units, or the rehabilitation and conservation of heritage property: (i) for which a complete rezoning enquiry or application, development permit, application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City, and (ii) which, in the opinion of the Director of Development Services, is being diligently pursued and without unnecessary delay.

In this instance, adjoining properties had been combined and the existing housing was demolished in September 2018, leaving two lots. In accordance with the Bylaw, the Vacancy Tax applies to residential properties that were neither 1) the principal residence of the owner, or a permitted occupant, nor 2) occupied by a tenant or subtenant for residential purposes in periods of 30 or more consecutive days, for at least six months of the vacancy reference period, which was 2020.

A home and a laneway house were built on one lot but the homeowner's lot was vacant as a result of the 2018 demolition. The Homeowner applied for a sewer and water permit on October 26, 2020, and a permit was issued on December 8, 2020.

No permit was applied for regarding the unimproved property in question in advance of July 1, 2020, and therefore the vacancy tax applies.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED
Vacancy Tax Review Panel
27th of June, 2022



Vacancy Tax Review Panel

Aug 09, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00063
Vacancy Reference Period: 2018

Folio: s.22(1)
Civic
Address:

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the Tenanted property status pursuant to Section 2.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

In accordance with section 2 of the Bylaw as it then was, the vacancy tax does not apply to properties that have been rented out or occupied for residential purposes in periods of 30 or more consecutive days, for at least 180 days of the Vacancy Reference Period.

The primary evidence submitted was the Residential Tenancy Agreement ("Agreement") and we consider the Agreement to be unreliable to prove that there was a tenant occupying the property. The Agreement contained contradictory information concerning the length of the tenancy, which is specified in one part of the Agreement to be one year, and on the other part of the Agreement to be two years. In addition, there is no building number provided, so there is no full street address provided on the document.

In addition, there are not two proper pieces of secondary documentation to support the tenancy. To be proper pieces of secondary documentation, documentation obtained from a tenant has to be accompanied by a third party consent. Neither piece of documentation is accompanied by a third party consent. One of the pieces of documentation is a page of a passport of the alleged tenant. This page does not include the home address of the tenant and is not proof of occupancy. Three (3) BC Hydro statements have been provided, which confirm the service address and show name of the alleged tenant, s.22(1) demonstrating usage between June-December, 2018. We do not consider the evidence to be sufficient to prove occupancy.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
27th of June, 2022



Vacancy Tax Review Panel

Sep 20, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00068

Vacancy Reference Period: 2018

Folio:

s.22(1)

Civic

Address:



The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the REDEVELOPMENT OR MAJOR RENOVATION property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the Review Officer in applying the Bylaw.

In the course of its review, the Panel finds that the evidence was neither compelling nor effective in leading the Panel to a reasoned determination that the property was unoccupied for more than six months during reference period because it was undergoing redevelopment or major renovation for which permits had been issued by the City, pursuant to the governing Section of the Bylaw.

Based on its review, the Panel finds that the evidence WAS NOT sufficient or appropriate to support the property status claimed. Because the parcels of land in question were not consolidated until 2019, the cottage is being evaluated on its own merits for the purposes of this file review. As a result, the heritage status of the other property does not extend to the cottage, and because the cottage is considered improved land, which contains “dwelling units,” it cannot be considered under section 3.2 (b) of the Bylaw. Therefore, section 3.2(a) of the Bylaw must be applied.

No permits were issued for the property in question before July 1, 2018. Based on the Panel’s review, it appears the development permit was not applied for until 2019. Therefore, renovations/redevelopments for which permits have been issued was not the reason the property was vacant for more than six (6) months during the 2018 vacancy reference period, and as a result, the Section 3.2(a) exemption does not apply.

The Panel has also considered whether the Tenanted status derived from Section 2.2 of the Bylaw may apply to the property in question, as the property owner has provided a RTA indicating a lease period of March 1, 2018 to February 28, 2019. However, communication from s.22(1) supported by secondary evidence documentation, confirms that the tenants in question vacated the property after approximately three (3) months due to reported uninhabitability of the property, and there is no evidence to suggest that new tenants or permitted occupants were secured for the property. As previously indicated by the CoV representatives, it is incumbent on the property owners to ensure habitability until which time appropriate renovation/redevelopment permits can be secured. Furthermore, habitability is not a criterion used to determine whether a property is considered to be improved with a dwelling unit.

The Panel has also considered the intention of the Bylaw, which is to return vacant or under-utilized properties to the long-term rental market for those individuals and families living and working in Vancouver. Based on that, it is the Panel’s final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
B. Hamilton and E. McCormack
Vacancy Tax Review Panel
Jun 13, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Aug 09, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00070
Vacancy Reference Period: 2019

Folio:
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Address:

s.22(1)

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the Tenanted property status pursuant to Section 2.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw. In order to qualify for exemption under this Section, a residential property must have been occupied by a tenant or subtenant for a term of at least 30 consecutive days, for at least 6 months during the vacancy reference period for residential purposes. I further note that the subject property was in fact unimproved with any dwelling units at material times bearing upon this review. Therefore, Section 3.2 (b) or (c) of the Bylaw will apply in this case. Pursuant to this latter Section, the unimproved property will qualify for exemption provided that a complete rezoning or development permit application has been submitted and is under review, and the application is being pursued diligently.

In the course of its detailed analysis, the Panel finds that the owner's evidence submitted was neither sufficient nor effective in supporting the Tenanted property status claimed. The owner has not provided a satisfactory body of evidence that leads the Panel to a reasoned determination that the property was tenanted or used for residential purposes during the 2019 Vacancy Reference Period. As the property was unimproved with a dwelling unit at material times, without any development application having been made within same material times, exemption is not triggered pursuant to Sections 3.2(b) or (c) of the Bylaw. Finally, the Panel has considered whether the COV having used a portion of the property, with or without consent, would amount to any manner of potential interference or impediment to the owner submitting a redevelopment application as required by Section 3.2 of the Bylaw, and the Panel has identified no such potential interference or impediment.

In its review, the Panel has also considered the intent of the Bylaw, which is to return vacant or under-utilized properties to the long-term rental market for those individuals and families living and working in Vancouver. Based on that intent, coupled with findings resulting from its above-referenced evidentiary review, it is the Panel's final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
20th June, 2022



Vacancy Tax Review Panel

Aug 09, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00071

Vacancy Reference Period: 2018

Folio:

Civic

Address:

s.22(1)

The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES NOT qualify for the Tenanted property status pursuant to Section 2.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw. In order to qualify for exemption under this Section, a residential property must have been occupied by a tenant or subtenant for a term of at least 30 consecutive days, for at least 6 months during the vacancy reference period for residential purposes. The Panel further notes that the subject property was in fact unimproved with any dwelling units at material times bearing upon this review. Therefore, Section 3.2 (b) or (c) of the Bylaw will apply in this case. Pursuant to this latter Section, the unimproved property will qualify for exemption provided that a complete rezoning or development permit application has been submitted and is under review, and the application is being pursued diligently.

In the course of its detailed analysis, the Panel finds that the owner's evidence submitted was neither sufficient nor effective in supporting the Tenanted property status claimed. The owner has not provided a satisfactory body of evidence that leads the Panel to a reasoned determination that the property was tenanted or used for residential purposes during the 2019 Vacancy Reference Period. As the property was unimproved with a dwelling unit at material times, without any development application having been made within same material times, exemption is not triggered pursuant to Sections 3.2(b) or (c) of the Bylaw. Finally, the Panel has considered whether the COV having used a portion of the property, with or without consent, would amount to any manner of potential interference or impediment to the owner submitting a redevelopment application as required by Section 3.2 of the Bylaw, and the Panel has identified no such potential interference or impediment.

In its review, the Panel has also considered the intent of the Bylaw, which is to return vacant or under-utilized properties to the long-term rental market for those individuals and families living and working in Vancouver. Based on that intent, coupled with findings resulting from its above-referenced evidentiary review, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
20th June, 2022



Vacancy Tax Review Panel

Aug 09, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00073

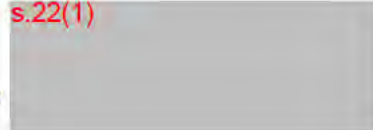
Vacancy Reference Period: 2019

Folio:

Civic

Address:

s.22(1)



The Vacancy Tax Panel was asked to conduct an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed de-novo review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel advises the Parties that the property DOES qualify for the Principal Residence - Permitted Occupant property status pursuant to Section 2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw, in the course of the Officer's final stage review at point of having had an opportunity to review the owners additional document submitted. In order to qualify for exemption under this Section, a residential property must have served as the principal residence of an owner or a permitted occupant for at least six months of the vacancy reference period.

In this case, the property owner claimed exemption from the tax on the basis that s.22(1) moved into the property and occupied it as her principal residence from late June of 2019, and throughout and beyond the end of the reference period in issue. In support of this claim, the owner initially provided insufficient evidence to support a finding that the property had served as the described permitted occupant's principal residence for the entirety of the timeframe claimed.

At the audit stage, however, the owner later provided a further series of documents, including a sworn and notarized affidavit from the described permitted occupant, along with a letter provided by the subject Strata manager supporting their observations that a person (not named) had been living at the property throughout the claimed timeframe.

In addition to these compelling and credible documents, the Panel further notes that the owner has provided additional evidence including numerous delivery receipts attaching the claimed permitted occupant to the property, and a record of move in/move out fees which also coincide with the claimed principal occupancy.

Based upon its comprehensive review of the Parties' evidence, weighed and measured on a balance of probabilities, the Panel finds that the evidence is sufficient and effective in leading the Panel to a reasoned determination that the subject property served as the principal residence of a permitted occupant for at least six months within the vacancy reference period.

The Panel has also considered the intent of the Bylaw, which is to return vacant or under-utilized properties to the long-term rental market for those individuals and families living and working in Vancouver. Based on that intent, coupled with findings resulting from its above-referenced evidentiary review, the Panel has arrived at a final determination that Vacancy Tax SHOULD NOT be imposed on the property.

Review Determination: ACCEPTED

Vacancy Tax Review Panel
13th July, 2022



Vacancy Tax Review Panel

Sep 23, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00077

Vacancy Reference Period: 2019

Folio:

s.22(1)

Civic

Address:



The Vacancy Tax Panel was convened for the purpose of conducting an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel has arrived at a final determination that the property DOES NOT qualify for the REDEVELOPMENT OR MAJOR RENOVATION property status claimed pursuant to Section 3.2 of the Bylaw and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In the course of its detailed analysis, the Panel finds the evidence submitted to be neither sufficient nor effective in supporting the property status claimed. On careful review of the evidence, the Panel finds that the property was not subject to required permits issued by the City pursuant to Section 3.2 (a)(i), at material times during the reference period.

The Panel notes that the owner received notice of his tenant's intent to end tenancy on 15th April 2019. The Panel further notes that, having taken no apparent steps to re-rent the property, the owner subsequently applied for the required Building Permit on 20th September 2019, with same Permit having been issued on 14th November, 2019. Flowing from this determination, the Panel finds that, pursuant to Section 3.2 (a) (i), the property was subject to permitted renovation for only 2.5 months, considerably outside the minimum six months stipulated in the governing Bylaw.

While the Panel has considered the owner's detailed correspondence setting out the chronology and circumstances bearing on this case, it is the Panel's finding that the Bylaw does not contemplate the specific circumstances which may lead to a Property being ineligible for exemption pursuant to Sections 2 and/or 3.2 of the Bylaw. Rather, the Bylaw strictly contemplates whether or not a property meets the criteria stipulated for exemption under either of these Sections. While it acknowledges the owner's described circumstances, the Panel must render a finding that reflects the wording of the applicable Bylaw Sections. In applying the provisions of Section 2 and 3.2, both separately and in conjunction as they each bear upon the circumstances of this case, the Panel finds that the evidence falls short of leading the Panel to a reasoned determination that exemption under either or both Sections is triggered in this case.

In conclusion, and based upon its comprehensive review of all evidence put before it, the Panel has reached a final determination that the reason this property was unoccupied for more than six months during 2019 was not because it was undergoing redevelopment or major renovation under permits issued by the City. The Panel further finds that the property was not occupied by a tenant or subtenant for residential purposes for a minimum of at least six months, for terms of at least 30 day consecutive days, during the reference period.

In the course of its review, the Panel has also considered the intent of the Bylaw, which is to return vacant and underutilized properties to the long term rental market, for persons living and working in Vancouver. Based on that intent, combined with the above-referenced evidentiary review, it is the Panel's final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
G. Molnar & S. Rose
13th July, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Sep 23, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00079

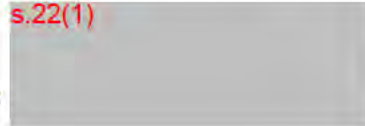
Vacancy Reference Period: 2019

Folio:

Civic

Address:

s.22(1)



The Vacancy Tax Panel was convened for the purpose of conducting an independent adjudicative review of the above-referenced case, by request of the involved property owner. In accordance with established Vacancy Tax Review Adjudication processes, the case in question has been subject to a detailed adjudicative review, involving all available evidence as submitted by both the City and the property owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the claimed exemption, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel has come to a determination that the property DOES NOT qualify for the Principal Residence - Permitted Occupant property status claimed, pursuant to Section 2 of the Bylaw, and there WAS NOT any error made by the City's Review Officer in applying the Bylaw.

In this case, the property owner claimed exemption from the tax under Section 2 on the basis that, while the unit had been rented out in previous years (2017 and 2018), the last tenancy in force came to an end in early 2019. The owner explains that, on receiving several months' notice of her tenant's intent to move out in early 2019, she commenced efforts to advertise it and secure a new tenant. The owner goes on to explain the further complicating factor of a leak in the dwelling and its effect on her ability to rent it.

Arising from its detailed review of the evidence provided, the Panel acknowledges that the owner made expedient and ongoing efforts toward securing a new tenant for the required minimum six month occupancy period stipulated in the Bylaw, during the reference period. The Panel further acknowledges that the owner experienced unexpected difficulty and delay in securing same tenant, and that s.22(1) may have stayed at the property for the period of time described. However, the evidence in its totality is neither effective nor compelling in leading the Panel to a reasoned determination that the property served as a permitted occupant's principal residence during the reference period. On a preponderance of the evidence, the Panel finds that the property was unoccupied as defined in Section 2 of the Bylaw for more than six months during the reference period.

In the course of its review, the Panel has considered written comments entered by the City's Review Officer, wherein the Officer cites the Bylaw's definition of "principal residence".

The Panel agrees with the Officer's interpretation of the evidence as bears against governing Bylaw wording, and finds that the question as to whether a property has served as the principal residence of either an owner or a permitted occupant is subject to a different test, and one which is governed by the above-referenced definition.

Based upon its comprehensive review of the Parties' evidence, weighed and measured on a balance of probabilities, the Panel finds that the evidence is neither sufficient nor effective in leading the Panel to a reasoned determination that the subject property served as the principal residence of a permitted occupant for at least six months within the vacancy reference period.

The Panel has also considered the intent of the Bylaw, which is to return vacant or under-utilized properties to the long-term rental market for those individuals and families living and working in Vancouver. Based on that intent, coupled with findings resulting from its above-referenced evidentiary review, the Panel has arrived at a final determination that Vacancy Tax SHOULD be imposed on the property.

Review Determination: NOT ACCEPTED

S. Rose & G. Molnar
Vacancy Tax Review Panel
13th July, 2022
ADR Institute of BC



Vacancy Tax Review Panel

Aug 09, 2022

CONFIDENTIAL

s.22(1)

File Number: RC-2021-00082
Vacancy Reference Period: 2018

Folio:
Civic
Address:

s.22(1)

Pursuant to s. 6.10 of the City of Vancouver Vacancy Tax Bylaw, No. 11674 (the "Bylaw"), the Vacancy Tax Panel was convened to conduct an independent adjudicative review of the above-referenced case, on the request of the involved property owner. In accordance with established Vacancy Tax Review Panel adjudication processes, the case in question has been subject to a detailed review, involving all available evidence submitted by both the City and the disputant property owner claiming exemption from the tax. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the dispute, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel determines that the property DOES NOT qualify as the principal residence of the homeowner, as claimed and that the Review Officer WAS correct in determining that the property was subject to the Vacancy Tax for the reference year 2018.

The homeowner has maintained throughout that the property was the homeowner's principal residence and that is the grounds for this review. The homeowner has also provided evidence to suggest that all or a portion of the property may have been tenanted during the reference year or perhaps that it was the principal residence of someone else, but has not asked for a review on that basis.

Despite what the general public might consider to be a "principal residence" the Bylaw explicitly defines that term and that is the definition that governs this appeal. A "principal residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence.

We have reviewed the items of evidence presented to the Review Officer and agree with his/her determination of the persuasiveness of each. The evidence that does not support that the property was the principal residence of the owner includes the owner's driver's license, the insurance certificate for the property and the CRA Notice of Assessment. Only the BC Hydro bill definitely connects the homeowner to the residence during the reference period and that bill was for August 2018 only. It is not sufficient to show that the property was where the homeowner was paying bills and receiving mail for 185 days (as the Bylaw then provided a home was "vacant" and therefore taxable if unoccupied for more than 180 days) during the reference year.

Review Determination: NOT ACCEPTED

Vacancy Tax Review Panel
July 22, 2022



Vacancy Tax Review Panel

Aug 09, 2022

CONFIDENTIAL

s.22(1)



File Number: RC-2021-00088

Vacancy Reference Period: 2019

Folio:

Civic

Address:

s.22(1)



Pursuant to s. 6.10 of the City of Vancouver Vacancy Tax Bylaw, No. 11674 (the "Bylaw"), the Vacancy Tax Panel was convened to conduct an independent adjudicative review of the above-referenced case, on the request of the involved property owner. In accordance with established Vacancy Tax Review Panel adjudication processes, the case in question has been subject to a detailed review, involving all available evidence submitted by both the City and the disputant property owner claiming exemption from the tax. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the dispute, predicated on a balance of probabilities.

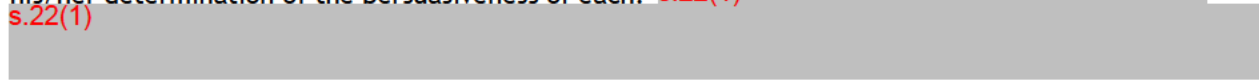
Having now completed its review, the Vacancy Tax Panel determines that the vacancy tax is not payable because the requirements for the exemption under section 3.7 of the Bylaws were met. The Review Officer WAS NOT correct in determining that the property was subject to the Vacancy Tax for the reference year 2019.

s.22(1)



For the 2019 vacancy year, no declaration was made by the deadline and the property was deemed vacant. A bill was issued on in February 2020 for the vacancy tax due April 16, 2020. A late payment penalty was subsequently applied.

We have reviewed the items of evidence presented to the Review Officer and we do not agree with his/her determination of the persuasiveness of each. s.22(1)



Review Determination: ACCEPTED

Vacancy Tax Review Panel
July 29, 2022



Vacancy Tax Review Panel

Sep 23, 2022

CONFIDENTIAL

s.22(1)

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File Number: RC-2021-00090

Vacancy Reference Period: 2019

Folio:

Civic

Address:

s.22(1)

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Pursuant to s. 6.10 of the City of Vancouver Vacancy Tax Bylaw, No. 11674 (the "Bylaw"), the Vacancy Tax Panel was convened to conduct an independent adjudicative review of the above-referenced case, on the request of the involved property owner. In accordance with established Vacancy Tax Review Panel adjudication processes, the case in question has been subject to a detailed review, involving all available evidence submitted by both the City and the disputant property owner claiming exemption from the Tax. In conducting its review, the Panel has considered and weighed all evidence with a view to rendering a final determination concerning the dispute, predicated on a balance of probabilities.

Having now completed its review, the Vacancy Tax Panel determines that the property DOES NOT qualify for exemption under Section 3.2 of the Bylaw: Property Undergoing Redevelopment or Major Renovations, or as the principal residence of the homeowner, as claimed, and the Review Officer WAS correct in determining that the property was subject to the Vacancy Tax for the 2019 reference year.

The sole owner of the property claims that it has been her principal residence s.22(1) The owner advised that s.22(1) due to safety concerns and moved into a different property in Vancouver that is owned by s.22(1) There were concerns that mould and fungus resulting from water leaks in the subject property would cause health concerns. Various professional were retained in 2019. The homeowner considers the property to be her principal residence, even though s.22(1)

A permit to complete the renovations was not issued until August 10, 2021. Therefore, the property was not unoccupied for more than six months during the 2019 vacancy reference period in order to redevelop or safely carry out major renovations to the property for which permits have been issued by the City.

The homeowner has maintained that the property in question was her principal residence during the 2019 vacancy reference period, and accordingly, the Panel has given consideration to whether the property should be exempt from the Vacancy Tax on that basis. In doing so, the Panel has considered the governing Bylaw's definition of Principal Residence.

The Panel has reviewed the items of evidence presented to the Review Officer.

The owner has little documentation tying her to the property, other than the homeowner's insurance in 2018. Her driver's licence has referenced the address of the other property since 2014.

Given she is living in the other property and substantially all of her mail is at the other property the evidence points to the other property being her principal residence. A Statutory Declaration stating that the property in question is her principal residence and that there was a valid reason for moving out is not sufficient evidence, on a balance of probabilities to prove that the subject property is her principal residence for at least six months during the 2019 vacancy reference period.

Review Determination: NOT ACCEPTED

B. Hamilton and E. McCormack
Vacancy Tax Review Panel
July 29th, 2022
ADR Institute of BC

Sep 08, 2021

CONFIDENTIAL

s.22(1)

File Number: RC-2019-00071
Vacancy Reference Period: 2017

Folio:
Civic
Address:

s.22(1)

RE: Vacancy Tax (Empty Homes Tax) Review Determination

We inform you that the Vacancy Tax Review Panel has concluded its review of your Review Request.

Based on the materials provided pursuant to Section 6.12 of the Vacancy Tax By-law, the Vacancy Tax Review Panel agrees with the complaint determination which concluded the following:

- The Review Panel has concluded the following:

In accordance with the Bylaw, the Owner in Care Exemption applies and the "vacancy tax is not payable...for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period because the occupier or tenant or subtenant is undergoing medical care or is residing in a hospital, long-term or supportive care facility, except that this exemption shall not be allowed for more than two consecutive vacancy reference periods." After reviewing the evidence provided, the panel believes that the Owner in Care Exemption does not apply, as the intended occupants, whom are in care, never occupied or tenanted the property - "occupier" being "a person who occupies residential property with the permission of the registered owner but is not a tenant or subtenant", as per subsection 1.2 of the Bylaw.

On careful review of all evidence in its totality, measured on a balance of probabilities, the Panel finds that the evidence is neither effective nor compelling in leading the Panel to a reasoned determination that the property was unoccupied for a period of more than 180 days during the reference period because the occupier or tenant or subtenant was undergoing medical care or is residing in a hospital, long term or supportive care facility.

Therefore, your property remains subject to the Vacancy Tax. The Vacancy Tax amount remains due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The determination of the Vacancy Tax Review Panel is final and no appeal is available.

Further information on the Empty Homes Tax can be found at vancouver.ca/ehf.

Vacancy Tax Department
City of Vancouver

The City of Vancouver Vacancy Tax Review Panel Decision

Date: December 11, 2023

File Number: RC-2021-00001

Requestor: s.22(1)

Vacancy Reference Year: 2018

Civic Address: s.22(1)

Folio: s.22(1)

s.22(1)

OVERVIEW:

- [1] In this case, the owner, s.22(1), constructed a new residential dwelling under a building permit issued by the City of Vancouver (the "City"). The issue is whether that construction proceeded diligently and without unnecessary delay. The Chief Building Inspector formed the opinion that it did not. As a result, the City assessed Vacancy Tax and the owner appeals from that decision. A further issue is whether as the Review Panel I can review and potentially reverse that opinion of the Chief Building Official.

BACKGROUND FACTS:

- [2] The building permit was issued On September 5, 2014, and was for a two story, single family dwelling, with a secondary basement suite and detached garage containing four parking spaces. Once the permit was issued, work commenced, and Vacancy Tax exemptions were provided up to 2017.
- [3] The City states that, starting in December 2018, its building inspectors were trying to arrange a final inspection, with the owner repeatedly advising completion was close and work progressing.
- [4] The owner was notified by a letter of September 26, 2019, that the property was selected for audit for 2018 on the Vacancy Tax exemption applied for by the owner for that year.
- [5] The owner applied for and received a paid building permit extension on November 5, 2019, for a further six month period ending May 6, 2020.
- [6] The owner advised the City auditor by a letter of December 3, 2019:

I have encountered major delays with contractors and poor workmanship with several of the contractors working on this house. In particular, s.22(1) and this took an extended amount of time to resolve. I had paid s.22(1) a large deposit, and therefore found myself in a bind to work them to get the problems solved. s.22(1) s.22(1) for my house, which caused countless errors in the sizing of the cabinets; for example, the kitchen island was removed from the house three times and sent back to their factory. The delay from the s.22(1) finishing their work ended up delaying every other contractor

from completing the work in the house including: painter, plumber, electrician, staircase etc. The other major delay was s.22(1)

s.22(1) As a result, I had to call several different drywallers to repair the walls and ceilings, and wainscoting. It was difficult to find s.22(1) to come in to do the work. I found out through this process that contractors do not like to come in to do rework, or be responsible to fix other contractors' work. I could not have the house painted until the walls were prepped and ready by the drywallers.

- [7] She also provided lists of the deficient work and pending work with reasons for delays, largely from lack of contractor deficiencies and unavailability. She advised the City that the delays were unavoidable, arising from s.22(1)

s.22(1) She said she had no background in construction, and that it was her first time with a construction project. The property was to be her s.22(1) and so she was very keen for their new home to be livable as soon as possible.

- [8] The compliance analyst, as delegate for the Chief Building Officer, concluded: "The compliance analyst agrees that the work contracted by the homeowner was delayed. However, review of the binder of evidence supports that all delays were not relevant to the building permit. All work conducted was, and is finishing work. The homeowner has spent a considerable amount of time ensuring that all work by contractors is to their (sic) exact specifications and that that works (sic) is re-completed should it not be up to standard. While there is delay with a number of the above listed issues, among others, the work does not limit the completion of the permit, nor does the work support that the permit was carried out diligently."

- [9] It appears from the evidence that a final occupancy permit was issued at some point in 2020 and the home became occupied by the owner and her family.

AUDIT AND VACANCY TAX REVIEW OFFICER DECISIONS:

- [10] The audit concluded that the work on the building construction (called "renovations in the February 12, 2020, letter) was not, in the opinion of the Chief Building Official, being carried out diligently and without unnecessary delay, and that the property was subject to Vacancy Tax.

- [11] The Review Officer decision reached the same conclusion.

ANALYSIS:

- [12] The relevant section of the Bylaw reads:

Property undergoing redevelopment or major renovations

3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

- (a) redevelop or safely carry out major renovations to the property:
 - i. for which permits have been issued by the City in the vacancy reference period, and
 - ii. which, *in the opinion of the Chief Building Official or the Chief Building Officer's delegates*, are being carried out diligently and without unnecessary delay, [emphasis added]

- [13] As noted, the opinion was that it was not diligently done and that the delays and problems arose from finishing work that did not prevent an occupancy permit.
- [14] On review of the evidence the conclusion that an occupancy permit could have been obtained is not obvious. A significant part of the delay related to deficiencies in electrical, plumbing and gas work, and delay in installation of fixtures and outlets, all necessary for the electrical and plumbing/gas inspections. Another delay was due to countertops being delivered without cutouts for the taps and then having to be taken back to be rectified, and the countertop fabricator refusing to do the work. Again, this meant a plumbing inspection was delayed. There were also building envelope issues with leaks around windows. It would seem this would all have prevented an occupancy permit.
- [15] However, that is not the issue here. It is instead whether the work proceeded diligently and without unnecessary delay. By 2018 that construction work for this residential dwelling had lasted some four years. The owner set out many reasons for this, but the length of time, by itself, can support a conclusion it was inordinate. There is room for differing opinions on this point.
- [16] As an adjudicator it is not my role to interject my own opinion. In fact, it might be argued that once the Chief Building Officer forms an opinion that the work was not done diligently, that opinion carries the day and cannot be reviewed. The basis for the exemption is not whether or not the work was "being carried out diligently and without unnecessary delay" but instead the opinion of the Chief Building Officer on that subject.
- [17] I need not reach a conclusion on this issue. If I have the jurisdiction to review the factually based opinion of the Chief Building Official (which it can be argued I must have given there is this two part review process in place) my focus must be on the reasonableness of that factual opinion, and not whether I would reach the same one.

[18] The Supreme Court of Canada recently stated the following in a case called *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65:

[83] It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to review, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem ... "as reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did" ... Instead, the reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable.

[19] I cannot say the opinion reached was unreasonable, and consequently dismiss this application for review.

FINAL DETERMINATION:

[20] My final determination is that Vacancy Tax should be imposed on the above-noted property.

Review Determination: DENIED



Panel: Michael F. Welsh, K.C.

Date: December 11, 2023

The City of Vancouver Vacancy Tax Review Panel Decision

Date: December 12, 2023

File Number: RC-2021-00072

Requestor: s.22(1)

Vacancy Reference Year: 2019

Civic Address: s.22(1)

Folio: s.22(1)

OVERVIEW OF ISSUE:

- [1] The issue in this case is whether a development permit is sufficient to satisfy the issued permit requirements for an exemption from vacancy tax under Section 3.2(a) of the City's Vacancy Tax By-law. That section reads:

Property undergoing redevelopment or major renovations

3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

(a) redevelop or safely carry out major renovations to the property:

- i. for which permits have been issued by the City in the vacancy reference period, and
- ii. which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay,

- [2] The registered owner submits that it does, and the City that it does not.

FACTS:

- [3] At the time the registered owner acquired the property, the dwelling located on the property was in disrepair and in need of redevelopment. The owner determined that, due to prior break-ins and damage to the property, it was uninhabitable and so, during the reference year of 2019 it was unoccupied.
- [4] A development permit was issued on April 18, 2019, to develop as s.22(1) at the rear containing two parking spaces.

- [5] A salvage and abatement permit was issued on Oct 9, 2019. It did not authorize demolition or “deconstruction” of the existing building and stated that a building permit was necessary in order to do so.
- [6] A building permit was also issued October 9, 2019.
- [7] The owner was notified that the property had been selected for audit for the 2019 year by a letter of August 18, 2020.

AUDIT AND VACANCY TAX REVIEW OFFICER DECISIONS:

- [8] The audit, in a letter dated November 5, 2020, concluded that “Based on the evidence provided, the City determines that this property does not qualify for this exemption on the basis that the renovations were not being carried out with issued permits”.
- [9] The owner filed a complaint to the Vacancy Tax Review Officer on the basis that it had the development permit in place by April 2019, and so was redeveloping the property under an issued permit. As its representative stated in a letter of September 21, 2019:

Accordingly, a property is exempt from Vacancy Tax under section 3.2 of the Bylaw where it is unoccupied for more than 6 months during the relevant year in order to redevelop, or carry out renovations, for which a permit, or permits have been issued by the City. ...

After the Development Permit was issued on April 18, 2019, the Property became an unoccupied property for a period of more than 6 months in order to redevelop or safely carry out major renovations to the Property for which the Development Permit was issued, and which were being carried out diligent and without unnecessary delay.

Therefore, the maximum period in the 2019 calendar year for which the property was unoccupied and for which no valid permit was issued, was from January 1, 2019 to April 17, 2019. This period is less than 6 months.

As the Property is exempt from Vacancy Tax during the 2019 calendar year by application of section 3.2 of the Bylaw, we believe the enclosed Development Permit satisfies the evidentiary requirements in respect of the exempt status of the Property in and of itself.

- [10] The Vacancy Tax Review Officer upheld the audit determination, stating in an April 28, 2021 decision:

To be eligible for an exemption under section 3.2(a) of the Vacancy Tax By-Law, a building permit that allows active construction (development permits do not allow active construction) must have been in an issued status for at least six months of the vacancy reference period (issued by July 1, 2019).

A building permit application (BP-2019-03684) was submitted on August 19, 2019 and issued on October 9, 2019. As a building permit was not issued by July 1, 2019, the property is not eligible for the "Property undergoing redevelopment or major renovation" exemption in Section 3.2(a) of the Vacancy Tax By-Law for the 2019 vacancy reference year.

Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in the vacancy reference period was not because it was carrying out redevelopment or initial development of residential property that is unimproved with any dwelling units, for which a development permit application is under review by the City. To be eligible for an exemption under section 3.2(b) of the Vacancy Tax By-Law, the property must be vacant land with a development permit under review by the City by July 1, 2019.

Although a development permit (DP-2017-00569) was under review by July 1, 2019, the property was not vacant land and therefore, it is not eligible for the "Property undergoing redevelopment or major renovation" exemption under Section 3.2(b) of the Vacancy Tax By-Law.

A property that is "unimproved with any dwelling units" means any property that is vacant land with no existing building. If there is an existing building on the property, then the exemption in section 3.2(b) does not apply. There is no exemption for a property that is unoccupied solely because the building is in a state of disrepair and not in a condition for people to live in, unless it is undergoing redevelopment or renovation with an issued building permit pursuant to section 3.2(a) of the Vacancy Tax By-Law.

Owners who are awaiting building permits must ensure that the property continues to be occupied as a principal residence or rented out for at least six months of the year.

ANALYSIS:

[11] The owner, through its representative, has made an extensive and thorough submission in support of its position.

[12] In summary it is as follows:

The Bylaw does not define "permit", [although "permits" is plural in the Bylaw, in accordance with subsection 28(3) of the *Interpretation Act (British Columbia)*, "...words in the singular include the plural, and words in the plural include the singular], however, in accordance with the principles adopted by the Supreme Court of Canada in *Rizzo & Rizzo Shoes* ([1998] 1 SCR 27)

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

In accordance with this principle, where a word is not defined in the relevant legislation, one must look to the ordinary definition of the word. The ordinary definition is generally determined with reference to major English language dictionaries.

"Permit" is defined by the *Merriam-Webster Dictionary* as "a written warrant or license granted by one having authority". When considered in the context of the Bylaw, this definition is appropriate.

.....

Neither the Bylaw itself nor the City's website contains specific requirements regarding the type of permit that qualifies for the redevelopment or major renovation exemption under section 3.2. The Bylaw refers only to "permits ... issued by the City." Therefore, applying the ordinary definition of a permit to the use of "permit" in the Bylaw, it should be clear that any "written warrant or license granted by [the City]" issued in respect of a Property should meet the requirements of section 3.2.

....

Furthermore, If the City intended to refer to a specific permit in paragraph 3.2(a), it is trite law that they could do so, and need to do so explicitly.

- [13] The submission goes on to reference and quote from the recent Supreme Court of Canada case, *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, that "it is not just the decision-making process that must be reasonable but the outcome of the decision must also be reasonable in the circumstances. An administrative decision must comply with the rationale and purview of the statutory scheme, and cannot disregard or rewrite the law as enacted."

- [14] The owner's submissions conclude:

As written, the Bylaw and the City's published guidelines provides that any (not all) permit or permits, issued by the City, provided such are issued in respect of an unoccupied property in order to undertake redevelopment or major renovation will satisfy the requirements of paragraph 3.2(a) of the Bylaw.

It was unreasonable for the City to disregard the language used in both the Bylaw and in its own guidelines to conclude that the Development Permit provided by the Registered Owner was inappropriate evidence, and that such permit does not satisfy the requirements of paragraph 3.2(a). There is no juristic reason for such a conclusion.

As the Property was unoccupied for a period of more 6 months during the calendar year to undertake a redevelopment and major renovation under the Development Permit issued by the City on April 18, 2019, and the Registered Owner has provided appropriate evidence in respect thereof, the Property is exempt under section 3.2 and is not subject to Vacancy Tax under the Bylaw.

- [15] Although not explicitly stated, the City's position seems to be that, as the issuance of a development permit is a specific requirement under subsection (b) of Section 3.2 for vacant land, it has been carved out as an exception, and thus is not also a proper permit under subsection (a). Consequently, only a building permit will satisfy the requirements of subsection (a).
- [16] The owner's submissions are the more compelling. The City in enacting the bylaw did not specify the types of permits that will support an exemption under Section 3.2(a). The specific reference to development permits in subsection (b) does not limit their applicability as permits under subsection (a). While a building permit is required before any actual construction work can occur, the section says only that to qualify for the exemption the owner must "redevelop or safely carry out major renovations to the property" for which permits have been issued, (the second issue of diligence not being in issue here). Redevelopment involves more than just actual demolition or building, as it incorporates all the steps necessary before construction begins, and for which a building permit is not needed.
- [17] On this basis I find that the owner has complied with the requirements for exemption from tax under Section 3.2(a).
- [18] While not raised by the owner, there is another basis on which the owner's claim for exemption is supported. The BC Supreme Court in a decision, *Belmont Nominee Ltd. v. Vancouver (City)*, 2021 BCSC 2492 considered the reasonableness of the City requirement that a July 1st deadline be set for permits and permit applications. It was a judicial review of a decision of the Tax Review Panel finding that to qualify for a tax exemption under Section 3.2(b) in a particular reference year, a development permit must be applied for by July 1st. The decision was that the words "more than six months" in the section apply to both the vacancy of the property and to the time the development permit application was before the City for consideration (or in the present case to the time when the permit was issued). The court rejected this interpretation of the bylaw as unreasonable, stating:
- [82] In effect, the Review Officer read in the requirement that the Development Permit Application needed to be submitted by July 1, 2018, but did not explain how it was that they arrived at that interpretation. There is no consideration of "in order to" or "for which" to explain how it was that they landed on the interpretation they did.
- [83] Rather, the Review Officer reached a result that required the exemption to be interpreted with words that do not appear in the By-law. The Review Officer does not engage with the text, even minimally, to explain this interpretation.

.....

[98] Based on my review of the whole of the record, the decision-makers did not grapple with the text, context or purpose of s. 3.2(b). As I have stated, there is no consideration to the meaning of the phrase “in order to”, there is no comparison to the wording of s. 3.2(c), and there is no analysis of how the purpose of the By-law as a whole or s. 3.2(b) in particular, support the imposition of a July 1 development permit application deadline.

[19] In the present case the decision of the Vacancy Tax Officer similarly sets the July 1st deadline in each year for issuance of a building permit in order to qualify for exemption. That decision states: “As a building permit was not issued by July 1, 2019, the property is not eligible for the ‘Property undergoing redevelopment or major renovation’ exemption in Section 3.2(a) of the Vacancy Tax By-Law for the 2019 vacancy reference year.”

[20] That is not what the section says. It reads: “A vacancy tax is not payable under this by-law for a parcel of residential property *if the residential property was unoccupied for more than six months during the vacancy reference period / in order to do one or more of the following*

(a) redevelop or safely carry out major renovations to the property:

i. for which permits have been issued by the City *in the vacancy reference period*
(*emphases and “/” added*)

[21] I find that the words “more than six months” apply as a modifier only to the period of vacancy, and not to the time in the vacancy reference period in which the permit must be issued. Instead, the modifier for the permit issuance is “in order to” do the redevelopment in the reference period (in this case 2019). As noted, the building permit was issued in October 2019, which was in that vacancy reference period. Again, applying Dreidger’s words quoted in *Rizzo*, this is supported by the words of the section read in “... their entire context and in their grammatical and ordinary sense”.

[22] On this basis as well I determine that the exemption properly applies.

FINAL DETERMINATION:

[23] My final determination is that Vacancy Tax should not be imposed on the subject property for 2019.

Review Determination: Granted.



Panel: Michael F. Welsh, K. C.

Date: December 12, 2023