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Case Nos: LC-2026-186

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPEAL AGAINST A DECISION OF THE FIRST-TIER PROPERTY CHAMBER
Ref: LON/OOAU/HMF/2025/0753

Royal Courts of Justice, Strand, London, WC2A 2LL
17 November 2026

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

HOUSING – RENT REPAYMENT ORDER – jurisdiction of the First-tier Tribunal to make a rent repayment order in favour of tenants who are party to a joint tenancy agreement, when not all the joint tenants have claimed

BETWEEN:

EBONY BROWN (1)
FREYA POEL (2)
CAROLINE SIMMONS (3)

Appellants

-and-

NYACK SEMELO-SHAW

Respondent

122 Widdenham Road,
London,
N7 9SQ

Judge Elizabeth Cooke
29 October 2026

Mr Justin Bates KC for the appellants, instructed by Anthony Gold LLP
Mr James Andrews-Tipler and Mr Hamish Fraser for the respondent, instructed by Advocate

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The following cases were referred to in this decision:

Cabell v Vaughan (1669) 1 Saund. 291
Dowd v Martins [2022] UKUT 249 (LC)
Hammersmith & Fulham LBC v Monk (1991) 23 HLR 114
Jacobs v Chaudhuri [1968] 2 QB 470
Jell v Douglas (1821) 4 B & Ald 374
Jepsen v Rakusen [2023] 1 WLR 1028
Marcus v Kwok [2024] UKUT 219 (LC)
Moreira v Morrison [2023] UKUT 233 (LC)
R v Rent Officer for Camden ex p Felix (1988) 21 HLR 34
Re Maud (No2) [2018] EWHC 1414 (Ch)
Solihull Metropolitan Borough Council v Hickin [2012] 1 WLR 2295
Sorsbie v Park (1843) 12 M & W 147
Turley and another v Panton and another [1975] 236 EG 197

Introduction

1. Rent repayment orders were first introduced by the Housing Act 2004, although their scope was widened considerably by the Housing and Planning Act 2016. Since their introduction it has not been doubted that a tenant may claim such an order regardless of whether they are the sole party to a tenancy agreement or one of a number of joint tenants, although it is clear that a tenant may not recover more than the rent she has herself paid (*Dowd v Martins* [2022] UKUT 249 (LC), *Moreira v Morrison* [2023] UKUT 233 (LC), and *Marcus v Kwok* [2024] UKUT 219 (LC)). The contrary proposition – that an individual who was party to a joint tenancy cannot claim unless all the joint tenants join in - has until now neither been suggested nor argued, as both parties acknowledged in this appeal. This is an appeal against a decision of the First-tier Tribunal that it did not have jurisdiction to make a rent repayment order where the applicants were party to a joint tenancy agreement and not all the joint tenants had joined in the application.

2. The appellants were represented in the appeal by Mr Justin Bates KC, instructed by Anthony Gold LLP, and the respondent landlord by Mr James Andrews-Tipler and Mr Hamish Fraser, instructed by Advocate. All counsel, and the solicitors, acted pro bono and the Tribunal is most grateful for their generosity which meant that the parties benefited from first-class advocacy in a most interesting hearing. Mr Bates KC mentioned at the beginning of the hearing that this had been Mr Giles Peaker's last case, as a partner in Anthony Gold LLP, before he died; he is sadly missed.

The legal background

3. The Housing Act 2004 requires certain rented houses to be licensed, including some (but not all) houses in multiple occupation ("HMOs"). Section 72(1) of that Act provides that it is an offence to manage or be in control of an HMO that is required to be licensed but is not so licensed.

4. Section 40 of the Housing and Planning Act 2016 gives the FTT jurisdiction to make a rent repayment order against a landlord when it is satisfied to the criminal standard of proof that the landlord has committed one of a number of listed housing offences, among them the offence under section 72 of the 2004 Act. The following is the text of the section as it stood before amendments made on 1 May 2026:

> 40. (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
>
> (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
>
> (a) repay an amount of rent paid by a tenant, or
>
> (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
>
> (3) A reference to *"an offence to which this Chapter applies"* is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	section	general description of offence
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction of harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control of management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

The factual background

5. The respondent is the freeholder of the ground-floor flat at 122 Widdenham Road, London N7, in the London Borough of Islington. An additional licensing designation, under section 56 of the Housing Act 2004, came into effect in Islington on 1 February 2021 and remained in force until 1 February 2026; the effect of that designation was that the flat required an HMO licence at any time when it was occupied by three or more individuals in two or more separate households.

6. The property has for some years been let by the respondent as an HMO, always under a single joint tenancy to three individuals. One tenant has always taken the lead in paying the rent; the other tenants pay their share to her and she then pays the whole of the rent to the landlord. When one tenant moves out, they assign their interest to their successor, although on some occasions a new joint agreement was made with all the tenants.

7. The three appellants lived in the property at different times:

    a. Ms Brown moved in on 25 February 2024 and moved out on 30 September 2024;

    b. Ms Simmons moved in on 3 July 2023 and moved out on or around 18 May 2024;

    c. Ms Poel moved in on 18 May 2024 moved out on 30 September 2024.

    Each lived there with two other tenants (Ms Brown and Ms Simmons were there together for a while, as were Ms Brown and Ms Poel), and each was, throughout their occupation. party to a joint tenancy agreement with two others.

8. In the FTT it was not in dispute that the flat was required to be licensed throughout the period when the appellants lived there, and was not licensed; the landlord's evidence, which the FTT accepted, was that he was unaware of the licensing requirement. The three appellants applied together to the FTT on 1 April 2025 for a rent repayment order, but none of the other tenants who lived there with them did so. The three appellants each claimed different sums of rent for different periods, on the basis of what each said she had paid; they provided schedules indicating who had paid what, and that evidence was not challenged.

The FTT's decisions

9. The FTT conducted a hearing, and issued a preliminary decision on 11 February 2026 in which the panel explained that at the hearing it had raised with the parties the possibility that it had no jurisdiction to make an order in favour of tenants who had been joint tenants, when not all their fellow joint tenants had joined in. The tenants' representative (not Mr Bates KC) was (naturally) taken by surprise, and so the matter was adjourned in order to allow the parties to make written representations about the point the FTT had raised. The decision of 11 February 2026 did two things.

10. First, it explained the basis of the FTT's concerns about jurisdiction as follows:

> "20. It can be seen that the current application is based on the monies which individual tenants contributed to the total monthly rent. This raises the question whether it is possible for individual tenants to make such a claim or whether the claim is the claim of all of the joint tenants to the total amount of rent paid.
>
> 21. We can take October 2023 as typical. On 18th October 2023, Ms Simmons received £926.66 from Mr Barratt and £1,036.66 from Ms Sukhani and paid £2,950 to the landlord. Her contribution to the rent was £986.68. (The three bedrooms at the property were different sizes, so the tenants agreed among themselves how the rent payable to the landlord was divided amongst themselves.)
>
> 22. The claim which Ms Simmons makes in respect of this month is for the £986.68. However, it seems arguable to us that the proper analysis of the claim is that it would be a claim by Ms Simmons, Mr Barratt and Ms Sukhani jointly against the landlord for £2,950. If that is right, then arguably Ms Simmons would not have an individual claim in her sole name for £986.68.
>
> 23. The problem is that, if the true analysis of the claim for a RRO in respect of the October 2023 is that it is a joint claim, only Ms Simmons is a party to the current application. The position at common law was that all joint creditors had to be plaintiffs. A failure to join all the joint creditors as plaintiffs in an action was fatal to the claim: *Jell v Douglas* (1821) 4 B & Ald 374, *Sorsbie v Park* (1843) 12 M & W 147. Equity was more flexible, but it still required all joint creditors to be joined as parties to an action, either as claimants or defendants. This is the current position following the fusion of law and equity in 1876.
>
> 24. Current practice in the civil courts, is governed by CPR Part 19. Rule19.3(10 provides that "[a]ll persons jointly entitled to the remedy claimed by a claim must be parties unless the court orders otherwise." Rule 19.3(2) says "If any such person does not agree to be a claimant, he must be made a defendant, unless the

court orders otherwise." It is at least arguable that this Tribunal should apply a similar approach.

11. Second, having found to the criminal standard of proof that the offence under section 72(1) of the Housing Act 2004 had been committed as claimed, it determined the amount of the rent repayment orders that it would make in favour of each of the three tenants if in due course it decided that it had jurisdiction to do so.

12. Having considered written representations from the parties, the FTT issued a final decision on 18 February 2026 in which it confirmed that it did not have jurisdiction. Its reasons remained as expressed in its preliminary decision: that a claim for a rent repayment order is a joint claim, so that on the authority of *Re Maud* [2019] Ch 15 all the joint creditors must be a party to a claim; and that the provisions of CPR rule 19 reflect that requirement.

13. The FTT explained that the requirement for all the joint tenants to join in was a protection for the landlord, first because otherwise it would not be clear what each individual tenant had paid, and the landlord might be exposed to multiple claims and be liable for more than the total rent he had received, and second because the landlord might have a claim for costs against the tenants under rule 13(1)(b) of the FTT's rules and would have a "significantly better" chance of enforcing such an order against all the tenants than against just one. "Further, it may well be that a group of joint tenants would be less likely to act unreasonably than a single tenant". The FTT concluded:

> "15. In our judgment, the failure of all the joint tenants to join in the claim is fatal to the applicants' claim. The claim to an RRO was a joint claim of all the joint tenants at the various relevant times. We can again take October 2023 to illustrate the point. That month Ms Simmons received £926.66 from Mr Barratt and £1,036.66 from Ms Sukhani and paid £2,950 to the landlord. The payment was not a payment by £2,950 by Ms Simmons to the landlord. It was a joint payment of £2,950 from Ms Simmons, Mr Barratt and Ms Sukhani to the landlord. Therefore any order of the Tribunal to "repay an amount of rent paid by a tenant" (see the wording of section 40(2)(a) of the Housing and Planning Act 2016) must in this case be an order to pay £2,950 (or a part thereof) to Ms Simmons, Mr Barratt and Ms Sukhani jointly, because the rent was paid by those three tenants jointly. It would not be an order to pay (if they were all parties) £986.68 to Ms Simmons, £926.66 to Mr Barratt and £1,036.66 to Ms Sukhani (or whatever the appropriate proportion of those figures would be).
>
> 16. In the absence of all the joint tenants, the Tribunal has in our judgment no jurisdiction to make an RRO."

14. In response to the application for permission to appeal the FTT amplified its reasons and expressed the view that an appeal would not have a reasonable prospect of success, but granted permission because the point was one of general public importance which the Upper Tribunal has not yet addressed.

15. In considering the arguments in the appeal, it will be convenient to consider first the arguments for the respondent in support of the FTT's decision.

The arguments for the respondent

16. Mr Andrews-Tipler and Mr Fraser argued that the FTT's construction of the statute, and of the word "tenant", was correct. The key characteristics of a joint tenancy are set out in *Megarry & Wade, Law of Real Property* (10th Ed) at 12-002:

> "A gift of lands to two or more persons in joint tenancy is such a gift as imparts to them, with respect to all other persons than themselves, the properties of one single owner. Although as between themselves joint tenants have separate rights, as against everyone else they are in the position of a single owner."

17. In *Hammersmith & Fulham LBC v Monk* (1991) 23 HLR 114 at 129 Nichols LJ said:

> "The exercise of a right conferred by a lease on persons jointly requires the positive concurrence of all those to whom the right was jointly given."

18. Thus the natural meaning of "a tenant" or "the rent" is "all the joint tenants together" and "the whole of the rent". That construction has been applied by the courts and tribunals to other statutes, although it was conceded that no other case determines how the Housing and Planning Act 2016 should be construed.

19. In *Jacobs v Chaudhuri* [1968] 2 QB 470 the question was whether one of two joint tenants under a business tenancy could claim a new tenancy under the Landlord and Tenant Act 1954. The Act did not define "the tenant"; the Court of Appeal held that it meant both joint tenants together. A single joint tenant is not "the tenant", but rather "one of the tenants" (per Winn J at 495F), and so could not claim a new tenancy (that result was later reversed by amendment of the statute). In *Turley and another v Panton and another* [1975] 236 EG 197 it was held that one joint tenant alone could not make an application to the rent tribunal under Part VI of the Rent Act 1968; similarly in *R v Rent Officer for Camden ex p Felix* (1988) 21 HLR 34 it was held that one joint tenant alone could not apply for the registration of a fair rent under the Rent Act 1977.

20. Where Parliament intends a meaning different from the common law meaning of "the tenant" it says so: thus under Part II of the Landlord and Tenant Act 1987 section 21(5) provides that any one of joint tenants may apply for the appointment of a manager. No such provision was made in the 2016 Act, said Mr Andrews-Tipler, and Parliament would have made provision if it intended that individual joint tenants could claim.

21. The Supreme Court in *Solihull Metropolitan Borough Council v Hickin* [2012] 1 WLR 2295 had to look at the same question in the context of section 89 of the Housing Act 1985, which makes provision for succession to secure tenancies. The joint tenants were husband and wife. The husband left some time after 1980; the wife died in 2007, but the husband was still alive. Could their daughter, who had lived at the property with her mother, succeed to the tenancy? The Supreme Court said no. At paragraph 12 Lord Sumption said:

> "It follows from the basic legal characteristics of a joint tenancy that the argument based on the use of the indefinite article in section 89(1) depends on a false distinction between "a tenant" and "the tenant". The distinction is false because the section is concerned with the tenant and the tenancy, not with the partial interest of any one individual in the tenancy. Where property is held under a joint tenancy, there is only one tenant, albeit that there are two or more people who jointly constitute that tenant. . . In construing a statute, the ordinary presumption

> is that Parliament appreciated the legal incidents of those relationships which it is regulating. If, therefore, the draftsman had intended "a secure tenant" in section 89 to mean any one of two or more joint tenants it is hardly conceivable that he would have left that intention to be inferred from his use of an indefinite article, instead of dealing with the point expressly (e g "a secure tenant, or in the case of a joint tenancy, any person having an interest under a joint tenancy")".

22. Mr Andrews-Tipler acknowledged the reliance placed by Mr Bates KC on *Lloyd v Sadler* (see below) in arguing that construction depends on context, but maintained that the *Solihull* decision shows that "it is not that easy". Express words have to be used if the common law meaning of the words "tenant" and "rent" are not to apply. Lord Hope in *Solihull* at paragraph 18 said:

> "The starting point must be that the rules of the common law apply except to the extent that they are abrogated or modified by the words of the statute. Where there is a joint tenancy there is one estate which is vested in all of them, with a right of survivorship".

23. Similarly, said Mr Andrews-Tipler, the Landlord and Tenant Act 1954 uses the expressions "a tenant" and "the tenant", but where there is a joint tenancy that means all the persons comprising the tenant, as held in *Jacobs v Chaudhuri*. Absent a "clear linguistic steer" the common law position prevails.

24. Mr Andrews-Tipler acknowledged that the CPR does not apply in tribunals, but maintained that CPR 19.3 reflects the long-standing rule that all persons jointly entitled to a remedy must claim it together. A joint promise creates a joint obligation (*Cabell v Vaughan* (1669) 1 Saund. 291; *Chitty on Contracts* 36th Ed. at 20-010; 20-040 (*citing Jell v Douglas* (1821) 4 B. & Ald. 374; *Sorsbie v Park* (1843) 12 M. & W. 146)); a joint covenant to pay rent is closely analogous. In *Re Maud (No 2)* [2018] EWHC 1414 (Ch) Snowden J refused to allow a single joint creditor to bring a bankruptcy petition.

25. As to the policy of the Act, it is to punish landlords; the convenience of individual tenants is not a paramount concern.

26. The FTT's construction, it was argued, prevents multiple claims and inconsistent claims. If an individual joint tenant can claim alone, then where A and B have paid £1,000 under their joint tenancy, one could claim £750 on the basis that he or she paid that amount, and later the other could do the same. There is a serious risk of inconsistent decision-making and over-recovery – as well as a waste of judicial resources in the tribunal treading the same ground twice. Indeed, the statute requires the FTT to be satisfied "beyond reasonable doubt" that an offence has been committed, and that implies a serious assessment which the FTT should not be making on a repeated basis. Indeed, different tenants may give different evidence about the physical condition of the property or the conduct of the landlord, which magnifies the risk of inconsistent decision-making.

27. Mr Fraser addressed me very ably on the subject of the principle against doubtful penalisation. The respondent's position is that the statute is unambiguous, but if there is any ambiguity then the Tribunal should observe the principle discussed in *Jepsen v Rakusen* [2023] 1 WLR 1028 at paragraph 57:

> "The principle is set out in Bennion, Bailey and Norbury on Statutory Interpretation, 8th ed (2020) at section 26.4 as follows: It is a principle of legal policy that a person should not be penalised except under clear law. This principle forms part of the context against which legislation is enacted and, when interpreting legislation, a court should take it into account."

28. The Tribunal should therefore avoid exposing the landlord to multiple claims. Only one claim to a rent repayment order should be possible; otherwise a landlord, having been found to have committed an offence and suffered an order to repay rent, is at risk of having to go through the process all over again and to pay again. He should not be subjected to an uncertain and drawn-out penalty.

29. Finally it was argued that the practical difficulties faced by a single joint tenant would not be so very great. The FTT's procedural rules are broad enough to allow parties to be joined, and to allow for different methods of service of proceedings where appropriate. If only one tenant took a active part, he or she could receive the repaid rent, take their own share, and hold the rest on trust for their fellow tenants.

The arguments for the appellants

30. For the appellants, Mr Bates KC argued that a single joint tenant, or any combination of joint tenants short of them all, can bring a claim for a rent repayment order so long as they can identify the rent they personally paid. He acknowledged, very fairly, that the FTT could not be criticised for raising the joint tenancy point on its own initiative, because if the point were correct then it would indeed go to jurisdiction. He also acknowledged that no case provides a clear authority dictating the outcome of the appeal. He agreed that the terms "a tenant" or "the tenant", in the statute *can* refer to all the persons who constitute the tenant under a joint tenancy.

31. However, according to Mr Bates KC, those terms can also mean "the joint tenants or any one of them". Whether or not they do, in a particular statute, is a matter of context and policy. The answer in *Jacobs v Chaudhuri* [1968] 2 QB 470 and, following that decision, in *Turley v Panton* and in *R v Camden ex p Felix R v Rent Officer for Camden ex p Felix*, was that joint tenants must claim the statutory right concerned together; but Mr Bates KC argued that there is no default rule that the common law meaning of the term "tenant" applies in the absence of express wording to the contrary. The most relevant authority is *Lloyd v Sadler* [1978] QB 774, which concerned security of tenure under the Rent Act 1968. One of the two joint tenants left to get married, in the course of the tenancy; when the tenancy expired, the remaining tenant claimed to be the statutory tenant under section 3(1)(a) of the Rent Act 1968, and thus to have security of tenure.

32. Section 3(1)(a) reads as follows:

> ". . . after the termination of a protected tenancy of a dwelling house the person who, immediately before that termination, was the protected tenant of the dwelling house shall, if and so long as he occupies the dwelling house as his residence, be the statutory tenant of it;..."

33. Could the tenant who had remained in the property be "the person who, immediately before that termination was the protected tenant of the dwelling house"? Megaw LJ

acknowledged that the logic of the common law would compel the conclusion that she was not. But he said, at 783B-D:

> "I have come to the conclusion that, on the true construction of section B 3 (1) (a) of the Act of 1968, the ordinary law as to joint tenancy does not have to be, and ought not to be, applied in all its strictness. I base that opinion, primarily at least, on the judgment of Scrutton L.J. in *Howson v. Buxton* (1928) 97 L.J.K.B. 749. It is not a direct authority. There is no direct authority. … where an Act of Parliament refers to " the tenant," and the letting is to two or more persons jointly, it is permissible for the court to hold, if so to do makes better sense of the relevant statutory provision in its particular context, that one of those persons, by himself, may for D certain purposes be treated as being " the tenant."

34. Shaw LJ at 790F said:

> "The answer to the question whether a joint tenant is entitled independently to assert or to pursue a right which is conferred by the joint tenancy or which develops from it must depend on the context in which the question arises. It is only on this basis that the numerous authorities cited in the course of the hearing of this appeal are to be reconciled".

35. That, said Mr Bates KC, is the approach to be taken here because it "makes better sense of the relevant statutory provisions", as Megaw LJ put it; what matters is context. I come back later to the practical considerations on which he relied in support of that. As to *Solihull v Hickin*, there the Supreme Court simply applied *Lloyd v Sadler*, and reached a conclusion on the basis of what made better sense of that particular statutory provision in that particular context.

36. As to context and policy, Mr Bates KC referred to paragraph 1 of the Supreme Court's judgment in *Jepsen v Rakusen* [2023] 1 WLR 1028 for its description of the policy and purpose behind rent repayment orders:

> "1. This appeal is about rent repayment orders (RROs). They are an important sanction against rogue landlords who commit certain types of offence in relation to the private rented sector of the housing market. Along with other sanctions, the aim of RROs is to encourage landlords to comply with the law and to drive them out of the market if they do not. They were originally introduced in relation to the non-licensing of houses in multiple occupation (or subject to a selective licencing scheme) by the Housing Act 2004 … but are now governed in England (but not Wales) by Chapter 4 of Part 2 of the Housing and Planning Act 2016 (the 2016 Act) under which they enjoy a greatly extended scope."

37. Mr Bates KC pointed out that if each of the appellants had been party to an individual tenancy agreement then there would have been no doubt that each was entitled to an order. If the FTT has no jurisdiction to make an order because the occupants each happened to be party to a joint tenancy agreement, that would be a very strange result for Parliament to have intended in a context where a rent repayment order is intended to penalise unlawful conduct by landlords. Neither this offence nor any of the others listed in section 40 of the 2016 Act (see paragraph 5 above) bears any relationship to the nature of the tenancy. If the FTT were correct, that would make it much harder for tenants under joint tenancies to get rent repayment orders because of the difficulty of keeping track of, and getting the co-

operation of, their former housemates, and there is no reason why Parliament's policy of raising housing standards should be more difficult to put into effect in relation to landlords under joint tenancies. It is of course inherent in the nature of HMOs that they are occupied by people who are not connected with each other and lead separate lives. Mr Bates KC argued that it is hard to see why a claim to a rent repayment order, for joint tenants, should depend upon their staying in touch with each other and being willing to co-operate.

38. Furthermore, the scope for abuse is obvious if the FTT is right. Imagine four tenants paying £10,000 in rent together, £2,500 each. None can get a rent repayment order unless all co-operate. The landlord could buy off one of them, by offering £3,000 in return for their not joining in a claim.

39. As to the concerns voiced by the FTT about the risk of multiple claims and the possibility that the landlord may have to pay more than the full amount of the rent, Mr Bates KC was sceptical. A tenant simply has to prove how much she paid, whether direct to the landlord or via a lead tenant; this is a matter of evidence and has not caused difficulties. The evidence of individual payments was uncontroversial in the present case. And the FTT has a discretion as to how much to order; a landlord faced with more than one claim for rent repayment over the same period will of course bring to the FTT's attention an earlier order made in respect of the same period, so as to alert the FTT to the possibility of an excessive claim. Furthermore, there is quite a tight limitation period for rent repayment claims; section 41(2) of the 2016 Act provides, since 1 May 2026, that the landlord must have committed the offence within the two years before the claim is brought (one year at the date of the application made in this appeal); there is no risk of the landlord being faced with claim after claim for an indefinite period.

40. As to the provisions of CPR rule 19.1, they do not apply in tribunals. And there is good reason for that.

Discussion and conclusion

41. It is right to start with the common law, which regards "the tenant" under a joint tenancy as all the joint tenants together. A right conferred by a lease has to be exercised by all the tenants jointly (*Hammersmith & Fulham v Monk*). An application for a rent repayment order is not a common law claim, nor is it a claim to exercise a right conferred by a lease. Nevertheless it is natural for a lawyer, faced with the word "tenant" in a statute, to take it – at least at first blush - to mean all the joint tenants if the tenancy is a joint one, because that is how the common law uses the term.

42. Is there a principle that the "the tenant", or "a tenant", in a statute means "the sole tenant or all of the joint tenants" unless the statute expressly provides otherwise? In my judgment there is no such principle. The words will mean "the sole tenant or all of the joint tenants" unless context and policy indicate otherwise. Hence the decisions in *Jacobs v Chaudhuri* and the other cases cited for the respondent, of which *Solihull v Hickin* (to which I revert below) is the most important. But if context and policy so indicate then "the tenant" can mean "the sole tenant or any one or more of the joint tenants" without express provision to that effect. *Lloyd v Sadler* is authority for that proposition, and the correct approach to the construction of the statute is set out by Megaw LJ in *Lloyd v Sadler* at 783 B-D:

> "…where an Act of Parliament refers to " the tenant," and the letting is to two or more persons jointly, it is permissible for the court to hold, if so to do makes better

sense of the relevant statutory provision in its particular context, that one of those persons, by himself, may for D certain purposes be treated as being " the tenant."

43. The Supreme Court's decision in *Solihull v Hickin* casts no doubt on that authority. The issue there was whether the joint tenants' daughter could succeed to the tenancy on the death of her mother, in circumstances where her father was still alive but had long since ceased to live at the property. Context was crucial; the tenancy had not come to an end; the father was still a tenant, and to find that the daughter could succeed would deprive him of the status of tenant and of the ability to return to live at the property. Lord Sumption (with whom Lord Walker agreed) said at paragraph 11:

> "Section 89 of the Housing Act 1985 is a mandatory provision which is wholly concerned with the transmission of the tenancy to a person other than the previous tenant, on account of the latter's death **This makes sense only on the assumption that there no longer is a previous tenant.** Where there is a surviving joint tenant, the whole statutory basis for disposing of the succession to the tenancy is absent. It is no answer to this to say that the purpose of the statute is to transfer the tenancy to members of the tenant's family living in the house. That simply begs the question. It is not necessary to provide for the transmission of a tenancy on death unless there is, so to speak, a vacancy. If the tenancy subsists in the surviving joint tenant, there is none." (emphasis added)

44. It is in that context that Lord Sumption went on to say in the following paragraph:

> "If, therefore the draftsman had intended "a secure tenant" in section 89 to mean any one of two or more joint tenants it is hardly conceivable that he would have left that intention to be inferred from his use of an indefinite article".

45. The context was the interaction between the common law right of survivorship, which meant that the tenancy had not come to an end, and the statutory provisions about succession which assumed that that the tenancy had come to an end.

46. Mr Bates KC suggested that the Supreme Court in *Solihull v Hickin* was simply carrying out the exercise prescribed by *Lloyd v Sadler* and looking at "what makes better sense of the relevant statutory provision in its particular context", as Megaw LJ put it. It is perhaps more correct to say that the majority in the Supreme Court started from the common law's use of language and stayed with that, because context and policy did *not* require a different construction. Lord Mance, who (with Lord Clarke) dissented and would have allowed Ms Hickin to succeed, *did* refer to *Lloyd v Sadler*, at paragraphs 32 to 34, because in his view it was appropriate to depart from the common law meaning of "a tenant". Lord Sumption and Lord Hope did not refer to *Lloyd v Sadler*, because they did not need to; for the majority. policy and context did not require a departure from the common law; on the contrary they took the view that the context required that the words retain their common law meaning. There was certainly no suggestion that *Lloyd v Sadler* was not correctly decided and the Supreme Court's decision casts no doubt upon it.

47. With that in mind I turn to the specific context of rent repayment orders.

48. Rent repayment orders are intended to punish and deter unlawful behaviour by landlords. There is no reason why that policy objective should be easier to achieve where a tenant holds under an individual tenancy agreement and harder where there the tenancy was joint.

Mr Andrews-Tipler played down the difficulty of joint claims, but the difficulty is considerable. Typically tenants claim once they have left the premises; other joint tenants may have left too and may be untraceable. Even if they can be found, they may have good reasons for not wanting to join in. Joining them in as defendants if they are unwilling is an unpalatable idea. More seriously, other joint tenants may still be in residence and it cannot be right for them to be forced to litigate against their landlord; in some cases it will not be safe.

49. To read "a tenant" as meaning "the sole tenant or all the joint tenants" would have the consequence that one of the factors that makes HMO tenants vulnerable to unlawful behaviour, namely the fact that they are unconnected individuals rather than a single household, would make it difficult for a claim to be made. The policy of the legislation points to a construction of "a tenant" and "the tenant" as meaning "the sole tenant, or any one or more of joint tenants" so as to make rent repayment orders straightforward to pursue and so as not to make a distinction between sole and joint tenants which, while legally orthodox, makes no sense in practical terms.

50. Moreover, Parliament has decided that rent repayment orders must be claimed in the FTT, a forum where the intention is that people can bring claims without legal training or legal representation. The idea that "a tenant" does not bear its ordinary meaning in ordinary language is implausible in that context; it is unrealistic to say that the "natural" meaning of "a tenant", to someone who is not a lawyer, is anything other than "an individual who is a tenant, whether alone or jointly with others".

51. The principle against doubtful penalisation is not relevant here. Parliament has already exposed a landlord who commits a housing offence to more than one penalty; he can be prosecuted, or he can be subject to a civil penalty order at the instigation of the local housing authority, and in addition to either of those he can be subject to a rent repayment order. As to the latter, there is a clear maximum period in which tenants can come forward (one year before 1 May 2026, now two years) and a clear maximum that he can be liable to pay (the rent). I see no difficulty here and certainly no "doubtful penalisation"; the maximum penalty is perfectly clear, and there is a clear and short limitation period.

52. The FTT was very concerned about the risk of over-recovery. The tribunals have been making rent repayment orders for over twenty years since 2004. Despite that long history, there is no evidence at all of over-recovery as a result of a claim by a single joint tenant. Individuals claim what they say they have paid and can generally produce evidence that they have done so in the form, for example, of bank statements. Landlords are free to challenge such claims. I am not aware of any case where a joint tenant has claimed the repayment of rent in a sum which, if awarded, would have led to the landlord paying out more than the rent received, let alone of any case that has in fact led to over-recovery. Certainly none has reached the Upper Tribunal on appeal.

53. The FTT had in mind the provisions of CPR 19.3. But as Mr Bates KC said, there are good reasons why the CPR is not applicable in the tribunals. More importantly, to assume that rule 19.3 is relevant is to put the cart before the horse; it is relevant only if the statute is construed as the FTT thought it was, so that the claim for rent is a joint claim. CPR 19.3 is of no assistance in construing the statute.

54. As for the FTT's idea that it is better for all the tenants to take part so as to make it easier for the landlord to recover costs if they have conducted the litigation unreasonably

(pursuant to rule 13(1)(b) of the FTT's rules), I fail to see how that can possibly be relevant.

55. Furthermore, the FTT's construction of the statute leads to ridiculous results.

56. For one thing, as already discussed, the consequence of the FTT's approach is that where one or more joint tenants claims a rent repayment order, when all the tenants have left the property and the other joint tenants can be found but do not (for whatever reason) want to join in they must be joined in willy-nilly, as defendants if they do not wish to claim, which cannot have been Parliament's intention. For another, if "the rent" means, as the FTT insisted (see paragraph 15 of its final decision, paragraph 14 above), the whole rent, logic dictates that any amount ordered must be a single sum payable to all the joint tenants jointly and severally; in practical terms it will have to be paid to one and held on trust for all (a technical result wholly inappropriate in this context), or paid into court (ditto).

57. Where one or more of the joint tenants was in receipt of housing benefit, what happens? A tenant whose rent has all been thus paid cannot get a rent repayment order; must he be joined in? Or is the local housing authority to be joined in? And what of the rent ordered to be repaid? On the FTT's analysis "the rent" is the whole sum, and must include the housing benefit element; how is repayment to be managed in those circumstances?

58. Where a landlord fails to get an HMO licence then all the joint tenants have a claim if they wish to pursue it. But what of the case where the landlord has committed an offence – for example of harassment or unlawful eviction – against one only of them? Must they all join in a claim for a rent repayment order by virtue of an offence committed against only one of them?

59. These policy considerations and practical problems are, in my judgment, insuperable barriers to the FTT's construction of the statute. The FTT misconstrued the statute and failed to have regard to the authorities, which establish that the common law meaning of the term "a tenant" need not be the end of the road; the policy of the statute and the practical context lead inevitably to the conclusion that a claim to a rent repayment order can be made by a tenant, meaning any tenant whether holding under a joint tenancy or an individual tenancy agreement. It is a claim for the rent paid by that tenant, meaning the sum of money that that individual has paid by way of rent.

Conclusion

60. The appeal succeeds. The FTT had jurisdiction to make the rent repayment order sought by the appellants. As I mentioned above, in its preliminary decision the FTT set out the amounts it would order if it had jurisdictions. Those amounts (£3,147.34 to Ms Brown, £1,884.13 to Ms Poel, and £3,937.22 to Ms Simmons) are to be paid within 28 days of the date of this decision.

Judge Elizabeth Cooke
17 November 2026

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.