FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**DS/LON/00BK/HMF/2026/0095**
Property	:	**Re: Flat 54 Eastlake House, 41-59 Frampton Street, London, NW8 8LU**
Applicant	:	**Verica Krunic**
Representative	:	**Mr James Cairns, Justice for Tenants**
Respondent	:	**Gurmeet Kaur Sidhu**
Representative	:	**In person**
Type of application	:	**An application for a Rent Repayment Order under section 72(1) Housing Act 2004**
Tribunal members	:	**Judge N Candlin** **Mr A Morrison MRICS**
Date and venue of hearing	:	**28 October 2026 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**20 November 2026**

DECISION

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Decision of the Tribunal

1. The Applicant's application is dismissed.

The background

1. The Applicant prepared two bundles for the hearing, one entitled 'Applicant's statement of case' and one entitled 'Applicant's Reply' and numbers in square brackets [AB1/x][AB2/x] below refer to numbers in the Applicant's bundles.
2. The Respondent prepared two bundles for the hearing, entitled 'Respondent's Bundle for Determination' Parts 1 and 2 respectively, and numbers in square brackets [RB1/x and RB2/x] below refer to numbers in the Respondent's bundles.
3. The Applicant is a lessee pursuant to an assured shorthold tenancy agreement dated 2 August 2023 [AB1/68] (extended upon terms set out by email dated 7 July 2024 [AB1/ 88] ("the Tenancy Agreement") of property known as Flat 54 Eastlake House, 41-59 Frampton Street, London, NW8 8LU ("the Property").
4. The Property is a two-level flat in a council-managed building constructed around 1920 consisting of 54 flats over three floors ("the Premises").
5. The Respondent is the intermediate leaseholder and the Head Lessor is the City of Westminster.
6. In addition to the Applicant, and as set out within the "Parties" section of the Tenancy Agreement, the Property was also occupied at any one part of the time by two of three other tenants, referred to during the hearing as Tako, Dean and Natalia.

The hearing

7. The Applicant was represented by Mr James Cairns of Justice for Tenants. The Respondent was in person.
8. The Applicant sought permission at the start of the hearing to adduce further evidence by way of an Order 1 application made on the day of the hearing. The Respondent opposed the application.
9. For reasons given orally at the start of the hearing, the Tribunal declined permission to the Applicant to rely upon her further evidence, primarily because of the prejudice to the Respondent of such a late application and the material being such that it could and should have been disclosed in accordance with the Tribunal directions dated 30 March 2026.
10. By agreement between the parties, the Tribunal then proceeded to determine as a preliminary point whether or not the Applicant could prove beyond reasonable doubt that there had been three tenants

occupying the property as their main residence at the relevant time namely 1.2.24 – 31.1.25.

11. Both parties agreed that if the Applicant did not succeed on that point, her case would inevitably be dismissed.
12. The preliminary point was dealt with mainly through legal submissions but the Tribunal also heard brief oral evidence from the Applicant and the Respondent. Each party had the opportunity to put questions to the other party.
13. The Respondent was mindful of para (5) of the Tribunal Directions dated 30.3.26 by which she was warned that "If an allegation is being made that a person has committed a criminal offence, that person should understand that any admission or finding by the tribunal may be used in a subsequent prosecution. For this reason, he or she may wish to seek legal advice before making any comment within these proceedings."
14. The Respondent refused to answer most of the questions put to her in cross examination.
15. Mindful also of the burden being on the Applicant to prove her case beyond reasonable doubt, the Respondent put no questions to the Applicant in cross examination.

The Law

16. Section 72(1) of the Housing Act 2004 (HA 2004) states:

72 Offences in relation to licensing of HMOs

(1) If an HMO is required to be licensed under this Part … but is not so licensed, an offence is committed by—
(a) any person within subsection (1A), and
(b) any person who as landlord under a tenancy or licensor under a licence to occupy has an estate or interest in, or a right in relation to, the HMO that is superior (whether directly or indirectly) to the estate, interest or right of any person within subsection (1A).
(1A) The following are within this subsection—
(a) any person having control of or managing the HMO, and
(b) any person who is the landlord or licensor in relation to a person occupying the HMO under a tenancy or licence.

17. Section 254 of the HA 2004 states:

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–
(a) it meets the conditions in subsection (2) ("the standard test");
…
(2) A building or a part of a building meets the standard test if–

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
(b) the living accommodation is occupied by persons who do not form a single household (see section 258);
(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(d) their occupation of the living accommodation constitutes the only use of that accommodation;

18. Section 259 of the HA 2004 states:

259 HMOs: persons treated as occupying premises as only or main residence

(1) This section sets out when persons are to be treated for the purposes of section 254 as occupying a building or part of a building as their only or main residence.
(2) A person is to be treated as so occupying a building or part of a building if it is occupied by the person–
(a) as the person's residence for the purpose of undertaking a full-time course of further or higher education;

…

19. Section 43 of the Housing and Planning Act 2016 (HPA 2016) states that:

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

20. S2(1)(a) of Schedule 14 of the HA 2004 provides an exemption to the requirement for a HMO licence where the property is being "controlled' or "managed" by a local housing authority or local authority.

The Applicant's Evidence

21. The Applicant's evidence on the preliminary point was set out at paragraphs 5-12 of her witness statement [AB1/15]. Tako had lived at the Property throughout the relevant time and Natalie - who lived at the Property from the start of the relevant time - left on 15 July 2024 and was replaced on the same day by Dean.
22. The Applicant relied on the following facts to support her contention that the other tenants occupied the Property as their main residence:
    a. The Tenancy Agreement referred to the three tenants collectively as "Occupants";

b. Para 7.1 of the Tenancy Agreement referred to the use of the Property "as a private dwelling house, for the sole use of the Occupants only…"
c. The presumption that the other tenants had the same tenancy agreement, amended as appropriate, as her own;
d. An email written by the Applicant to the Respondent dated 14 August 2024 in which she referred to the Property on behalf of all three occupants as 'our home' [AB2 60];
e. An email dated 25 August 2024 from Dean to the Respondent stating that a workman's access to the Property "9-5 or 9-6 is fine for the entire week".

The Respondent's evidence

23. The Respondent was not deflected in cross examination from her assertion that Dean had said to her prior to moving into the Property that he was currently living with his parents in Sidcup but "wished to move closer to his girlfriend's residence which was located in the vicinity of the Subject Property and advised me that he would be spending considerable time at his girlfriend's" [RB1/44].The Respondent presumed he would also spend some time back at his parents' house.
24. The Respondent considered that this alone was evidence that the Property could not be proven to be Dean's main residence.
25. She asserted that her chain of emails with Westminster City Council ("WCC") dated 4 February 2025 [RB1 142] did not indicate that she conceded that there were three tenants using the Property as their main residence. The reason she made the enquiries at the time was because she was considering selling the Property and the estate agent suggested that she make enquiries to confirm whether or not it required an HMO licence.

The Respondent's Closing Submissions

26. The Respondent reiterated that pursuant to s43 of the HPA 2016, the Applicant had to prove her case beyond reasonable doubt.
27. She cited 27 Casson Street (LON/00BG/HMF/2022/0284, 19 June 2023, Judge Adrian Jack):

"[7] Because cases have to be proved to the criminal standard of proof, the burden is on the tenant to establish that an offence has been committed. The landlord has the right to silence. There is no provision for judgment by default."

28. The Respondent noted that the Applicant claimed to be on close terms with the other tenants yet had failed to provide a copy of their tenancy agreements so there was no evidence before the court to prove beyond reasonable doubt the basis of their occupation of the Property. It could not be presumed that their tenancy agreements were identical to those of the Applicant and even if they were, this did not prove that they lived at the Property as their main residence.
29. The Respondent cited Szymczak v Nafeesa Begum Ltd [2025] UKUT 151 (LC):

> [12]. "In conclusion the FTT said that on balance Mr Szymczak was a more credible witness and that it had doubts about some of Mrs Entwhistle's evidence, but that Mr Szymczak's case was based purely on his own assertions and denials. None of the other occupiers of the property had provided witness statements or attended the hearing and there was no documentary evidence about the basis of their occupation. Accordingly, the FTT was not satisfied beyond reasonable doubt that the offence had been committed on 30 September 2022 (or at all), and the application failed."

30. By analogy, the Respondent argued that the Applicant had not called the other tenants to give evidence and that the only evidence upon which the Applicant could rely as to the status of the other tenants was self-serving hearsay.
31. The Respondent stressed the extreme importance of the case to her and the jeopardy she felt she was placed in by the quasi-criminal nature of the proceedings.
32. She responded to the Applicant's reliance upon Opara [2020] UKUT 96 (LC) by stressing that that case concerned a very different factual matrix from the present case. That case concerned low-value housing – cheap rooms, to be blunt. The tenants were not people who were likely to have had a second home.[32]"
33. At least one of the tenants in Opara was in receipt of housing benefit which was another indicator that he was likely to be living in the property as his main home – an indicative factor not present in the instant case.
34. In respect of her application for the HMO licence in February 2024, the Respondent submitted that this in no way indicated that she considered the tenants to be occupying as their main residence. She had considered that she fell under the public sector exemption to the licence requirements because she considered the controller of the Premises to be WCC. The only reason the Respondent made further enquiries when she did was because she had considered selling the property and the estate agent had considered that she may need an HMO license.

35. The Respondent asserted that she only obtained the license as a precaution and it did not constitute evidence of her acknowledging that the tenants had all been occupying as their main residence.
36. In conclusion, the Respondent argued that there was no evidence and certainly none to prove beyond reasonable doubt that all three tenants were residing at the property as their main residence.
37. Accordingly, the Applicant could not prove beyond reasonable doubt that the Respondent required an HMO licence pursuant to s254(2)(d) of the 2004 Act.

The Applicant's Closing Submissions

38. Mr Cairns summarised the Applicant's position as follows.
39. The email correspondence appended to the Applicant's witness statement showed that the parties had a domestic arrangement indicative of three people using the Property as their main residence.
40. Mr Cairns relied upon the case of Opara for the contention that the Tribunal could draw an inference from the circumstances of the case to find that all three tenants were occupying the Property as their main residence.
41. Mr Cairns sought to distinguish Szymczak on the basis that it was an appeal to the UTT on the basis of a Ladd v Marshall [1954] 1 WLR 1489 argument that the applicant should not be permitted to adduce evidence after the decision had been made. He submitted that it was not on point in the instant case.
42. Mr Cairns submitted that this was not a case where there was no documentary evidence of the tenants' living arrangements but recognised that it was for the Tribunal to consider the weight of the documentary evidence.
43. In respect of each tenant in turn, he submitted that Tako was pursuing a Masters degree and from s259(2) of the 2004 Act, the residence of a person enrolled at university was considered to be their main residence. An email from Tako dated 21 June 2025 indicated she had "lived in the property for two years" [AB2/90].
44. Dean moved to the property from his parents' house in order to be nearer to his girlfriend. This did not necessarily mean that he spent most of his time at his girlfriend's. He asked the Tribunal to infer that it would be highly unusual to pay for rent at a property and not to live there as one's main residence.
45. Mr Cairns relied upon the application which the Respondent made to WCC on 4 February 2025 [RB1/142] as evidence that the Respondent considered all three tenants to be occupying as their main residence.

46. Mr Cairns argued that although he was asking the Tribunal to draw inferences, there was nothing that overtly countered the inference that the Tribunal was being asked to draw.

The Tribunal's Determination

47. The only question which the Tribunal has to determine at the conclusion of this preliminary hearing is whether or not the Applicant can prove beyond reasonable doubt that there were three tenants occupying the Property as their main residence between 1.2.24 – 31.1.25.
48. The parties agree that at the relevant time, the Respondent did not have an HMO licence. They disagree over whether she needed one.
49. The parties agree that besides the Applicant, the relevant people were Tako and Natalie and then Tako and Dean.
50. The Tribunal need only determine that one of the three tenants was not occupying the Property as their main residence for the Applicant not to succeed on the preliminary point.
51. The Tribunal is not satisfied beyond reasonable doubt that Dean lived at the Property as his main residence during the relevant time for the following reasons.
52. The Respondent was adamant that Dean had said to her prior to moving into the Property that he intended to spend time at his girlfriend's house in the vicinity of the Property.
53. The Applicant provided no evidence to prove how much time Dean spent at his girlfriend's, nor did she call Dean or Tako to give witness evidence on the point.
54. The Tribunal accepted the Respondent's submissions on Opara that the factual matrix was quite different and that it could not be said of Dean that he was a person unlikely to have had a "second home".
55. The Tribunal was satisfied with the explanation which the Respondent gave as to why she began investigating an HMO licence in February 2024.
56. Whilst the Tribunal accepted in principle the Applicant's contention derived from Opara that it could draw inferences from the evidence, it did not consider that there was sufficient evidence to draw the inference that Dean lived at the Property as his main residence.
57. The Tribunal considered that Szymczak was of relevance to the case in respect of the quality and weight of evidence adduced by the Applicant to prove her case.
58. In conclusion, the Tribunal determined that the Applicant had not proved the preliminary point that three persons had lived at the Property as their main residence at the relevant time. Accordingly, the Applicant's application is dismissed.

Name: Judge N Candlin **Date:** 20 November 2026

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).