



**Docket: LR23014**  
**Order: LR23-11**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by North American Health Research, against Order LR23-062 issued by the Director of Residential Rental Property, dated February 22, 2023.

**BEFORE THE COMMISSION ON** Monday, April 17, 2023.

Panel Chair - Erin T. Mitchell, Commissioner  
M. Douglas Clow, Vice-Chair

Hearing Date: Tuesday, April 11, 2023

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# ORDER

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(Sgd.) Susan Jefferson  
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Commission Administrator  
Corporate Services and Appeals

This appeal asks the Commission to determine whether the Director of Residential Rental Property (the “Director”) erred in finding that access to a common room was improperly withheld by a landlord.

## **BACKGROUND**

North American Health Research (the “Landlord”) rented units located at 18 Elena Court, Charlottetown, PE (the “Building”) to Maudie Dunn (“Ms. Dunn”) and Debby Wilson (“Ms. Wilson”) (collectively the “Tenants”). Rent for each unit was \$681.00 per month due on the first day of the month.

On October 18, 2022, the Tenants filed with the Director two (2) applications pursuant to sub-sections 8(b), 8(d.1) and 8(d.2) of the Act (the “Common Room Applications”).

On November 18, 2022, Ms. Dunn filed with the Director an application pursuant to subsection 8(b) of the Act (the “Cleaning Service Application”)

In Order LD23- 062 dated February 22, 2023, the Director dismissed the Cleaning Service Application and allowed the Common Room Applications. The Director ordered the Landlord to unlock the common room’s door and allow the tenants who continue to live in the Building access to the common room effective immediately.

The Landlord appealed the Order.

The Commission heard the appeal by way of telephone conference call on April 11, 2023. The Landlord was represented by legal counsel Lucas MacArthur (“Counsel”). Jie Hu (“Ms. Hu”) testified for the Landlord. Ms. Dunn also participated but Ms. Wilson did not attend.

## **Disposition**

The appeal is allowed and the requirement that the “common room” be unlocked is reversed.

## **The Issue**

Did the Director correctly determine that an applications be allowed?

## **Analysis**

Ms. Hu purchased the 8-unit building in 2019, and assumed all existing leases. At the Director level, Ms. Hu did not have in evidence copies of the original leases, and as such the verbal evidence of the parties was weighed in terms of whether access to the common room formed part of the rental agreements. On appeal, several of the original leases were submitted by Ms. Hu.

Counsel submitted that the “common room” was actually a spare room and noted that the use of the spare room was not set out as an included service in past rental agreements, including the rental agreements between the previous landlord and the Tenants. Counsel also submitted that use of a common room or a spare room was not reasonably related to

a lessee's continued use and enjoyment of the premises within the meaning of subsection 6.2 of the Act.

Ms. Dunn testified that she and other tenants used the "common room" as an exercise room and for events such as birthdays and card playing. Ms. Dunn testified that Ms. Hu had given permission over the telephone to place a piece of exercise equipment in the room so long as it could be used by all tenants. Ms. Dunn testified that she moved out of the Building in February 2023.

The Commission finds that the Director did not have the benefit of earlier rental agreements between the previous landlord and the tenants. None of these rental agreements listed the "common room" as an included service.

Subsection 6.2 of the Act reads:

*Services*

*Where the lessor provides or pays for a service or facility to the lessee that is reasonably related to the lessee's continued use and enjoyment of the premises, such as heat, water, electric power, gas, appliances, garbage collection, sewers or elevators, the lessor shall not discontinue providing or paying for that service to the lessee without permission from the Director.*

The Commission finds that use of the common room was not listed as an included service in the past rental agreements. Further, the Commission finds that the common room was not reasonably related to the continued use and enjoyment of the premises in the manner contemplated in subsection 6.2 of the Act. Ms. Hu was therefore entitled to withdraw her permission for the tenants to use the room.

Accordingly, the Commission allows the appeal and reverses the following:

*The Landlord shall unlock the common room's door and allow the Tenants who continue to live in the Building access to the common room effective immediately.*

**NOW THEREFORE**, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*,

**IT IS ORDERED THAT**

1. The appeal is allowed.
2. The requirement that the common room be unlocked is reversed.
3. In all other respects, Director's Order LD23-062 is confirmed.

**DATED** at Charlottetown, Prince Edward Island, this 17th day of April, 2023.

**BY THE COMMISSION:**

(sgd. Erin T. Mitchell)

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Panel Chair - Erin T. Mitchell, Commissioner

(sgd. M. Douglas Clow)

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M. Douglas Clow, Vice-Chair

**NOTICE**

Subsections 26(2), 26(3), 26(4) and 26(5) of the *Rental of Residential Property Act* provides as follows:

26. (2) A lessor or lessee may, within fifteen days of the decision of the Commission, appeal to the court on a question of law only.  
(3) The rules of court governing appeals apply to an appeal under subsection (2).  
(4) Where the Commission has confirmed, reversed, or varied an order of the Director and no appeal has been taken within the time specified in subsection (2), the lessor or lessee may file the order in the court.  
(5) Where an order is filed pursuant to subsection (4), it may be enforced as if it were an order of the court.