



**STAFF REPORT
ACTION REQUIRED**

**Installation of Smart Meters in Residential Rental Units
and Its Impacts on Tenant Affordability**

Date:	June 12, 2008
To:	Tenant Defence Sub-Committee
From:	General Manager, Shelter, Support and Housing Administration
Wards:	All
Reference Number:	

SUMMARY

This report provides initial information about the provisions in the new *Residential Tenancies Act* (RTA) related to installation of smart meters in residential rental buildings, the current practice of installing smart meters and its impacts on tenant affordability, and recommends that further consultations on the matter be undertaken.

RECOMMENDATIONS

The General Manager of the Shelter, Support and Housing Administration Division recommends that Council authorize the General Manager, Shelter, Support and Housing Administration to consult and seek further input from the landlord and tenant communities and other stakeholders as appropriate on the installation of smart meters in residential rental units and the impact of such initiatives on tenant affordability, and report back to the next meeting of the Tenant Defence Sub-Committee.

FINANCIAL IMPACT

There is no anticipated financial impact arising out of this report.

DECISION HISTORY

At its meeting on April 30, 2008, the Tenant Defence Sub-Committee received a staff communication on Installation of Smart Meters in Rental Units. The Sub-Committee members raised a number of questions and requested staff to report back at the next meeting on June 17.

In 2004 when the Ontario Government began consultation with stakeholders on residential tenancy reform, energy savings through smart meters was one of the issues discussed in the government's consultation paper. The City submitted a comprehensive response to the consultation paper. On the issue of smart metering, the City recommended that any electricity conservation program that the government contemplates should ensure tenant protection measures to address installation and administration costs for individual metering systems, and ensure fair rent adjustments when the utility cost is no longer included in the rent. Such programs should be implemented only after a comprehensive study of costs and benefits has been carried out in consultation with tenants, building owners, municipalities and utility companies. (Recommendation 13 in the Report on "Response to the Ontario Government's Consultation Paper on Residential Tenancy Reform", adopted by Council June 24, 2004).

ISSUE BACKGROUND

As part of its energy conservation policy, the Ontario Government is moving towards providing a smart electricity meter with every home and small business throughout Ontario by 2010 and beyond. Smart meters or smart sub-meters measure how much electricity is used and what time of the day it is used by a consumer. Since during certain daytime hours, the cost of electricity would be higher, the smart meters or smart sub-meters can help customers reduce their overall demand for electricity by shifting their consumption to off-peak times such as at night and on weekends.

The new *Residential Tenancies Act* (RTA) has a provision (section 137) that permits landlords to install smart meters in rental units without tenant consent and transfer the cost of electricity use to tenants directly. Although this provision of the RTA is not yet enacted, transfer of electricity costs to tenants is currently taking place in some multi-residential rental buildings on a voluntary basis using another section of the RTA (section 125) related to discontinuation of services. The transfer can also occur upon re-rental of a unit to a new tenant.

COMMENTS

About 90% of Ontario rental buildings are bulk-metered, which means landlords purchase electricity for the apartment building and then provide it to their tenants as a service included in the rent. When a building switches to smart metering, tenants pay for their own electricity use and in return, get a reduction to their rent.

RTA Provisions on Smart Meters:

The RTA contains new rules dealing with electricity smart meters. Section 137, if enacted, would allow landlords to unilaterally switch to smart meters in multi-residential rental buildings where hydro is included in the rent. Because tenants would be paying directly for hydro, the rent must be reduced. The amount of rent reduction is to be based on the cost of electricity consumption and related costs. Regulations will be developed to set out how the calculation is to be done.

The new rules, if enacted, would establish conditions for installing smart meters in rental residential buildings, including:

- the smart meter must be installed by a person licensed under the *Ontario Energy Act*;
- the supply of electricity must not be interrupted for more than the minimum length of time necessary to install the smart meter;
- the landlord must provide adequate notice to the tenant according to prescribed rules;
- the landlord must not terminate the supply of electricity earlier than 12 months, or such longer period as may be prescribed, after the installation of the smart meter (note: the intention of this requirement is to provide an opportunity for the landlord and the tenant to examine the actual billing over a year, leading to a fair negotiation about the amount of rent reduction);
- the landlord must ensure the appliances provided for the rental unit and other aspects of the rental unit satisfy the requirements for electricity conservation;
- tenants can file an application to the Landlord and Tenant Board (LTB) to determine if the landlord has complied with the energy efficiency obligations prescribed in s. 137;
- if a smart meter is installed in a unit at the time of turnover and a prospective tenant is considering entering into a lease agreement, the landlord must provide the new tenant with the most recent electricity consumption information in the rental unit for a 12-month period available from the smart metering supplier. If the unit was vacant during any part of the 12-month period, the landlord is also required to give a statement about the vacant period.

According to the government, it has not yet enacted Section 137 due to a number of outstanding issues that need to be addressed to ensure that smart metering is done fairly and without unintended impacts on tenants or landlords.

Voluntary Installation of Smart Meters in Multi-Residential Rental Buildings

Despite the delay in implementing the smart metering regulations, voluntary installation of smart meters has begun in some buildings using section 125 of the RTA.

Section 125 of the RTA provides that “the landlord shall decrease the rent if the landlord and the tenant agree that the landlord will cease to provide any of the following with

respect to the tenant's occupancy of the rental unit: a parking space or a service, facility, privilege, accommodation or thing". The rule requires that the minimum decrease in the rent due to withdrawal of a service or facility must be "the actual cost to the landlord of providing the service or facility" (Ont. Reg. 516/06 s.16(2)).

Simply put, landlords are permitted to discontinue a service included in the rent as long as the tenant:

- agrees to the change, usually by entering into an agreement in writing with the landlord; and
- receives a rent reduction as determined by the actual cost of the service to the landlord.

If the tenant does not agree to the reduction or discontinuation of a service/facility, the landlord is not permitted to unilaterally reduce or discontinue the service/facility. However, landlords may unilaterally change the tenancy agreement to exclude hydro (or any service or facility they choose) when a tenant moves out and the unit is re-rented (vacancy decontrol).

Landlord perspective:

Generally, landlords of multi-residential buildings claim that conversion to smart meters will benefit tenants because they will become more energy conscious and use less electricity, and therefore will be able to realize savings through rent reductions that exceed what they currently pay for electricity. For example, the GTAA estimated that about 50 to 70 per cent of tenants broke even or did better after they switched to smart metering.

One landlord of multi-residential buildings in the GTA has claimed that the tenants who had agreed to the installation of smart meters in its portfolio have used on average 33 per cent less electricity.

Tenant Perspective:

Tenant advocates caution that tenants may not have as much protection as what s. 137 of RTA would provide if it is proclaimed, and may actually pay more if they agree to shift to smart-metering because:

- there is no requirement for the landlord to improve the energy efficiency of the building or to upgrade the current electricity systems and appliances even though they may be too old or not energy efficient;
- there may be an administrative fee charged to tenants after smart metering and it may increase annually; and
- while the regulation on rent reduction due to withdrawal of a service requires that "the minimum decrease in rent shall be the actual costs to the landlord of the service", there is currently no clear direction or details on how the minimum rent reduction should be calculated to reflect the actual cost to the landlord.

The Low-Income Energy Network (LIEN), a group of environmental and affordable housing advocates including ACTO have serious concerns about the government's approach to extend the smart metering initiative to multi-residential rental buildings, and the RTA provision that allows landlords to unilaterally install smart-meters and make tenants pay for their electricity use separate from their rent. Essentially, LIEN and ACTO are concerned that smart metering in the multi-residential rental sector will significantly reduce the incentive for landlords to save energy, and will increase the financial burden on low-income tenants.

Transfer of Responsibility for Hydro Payment in Lease Agreements:

Recently it has been brought to the attention of staff that the lease agreement in a number of buildings includes a clause that in effect gives the landlord authority to unilaterally withdraw hydro as a service included in the rent at a time the landlord chooses and requires the tenant to assume the responsibility for hydro payment based on their own consumption, with rent reduced according to the applicable rent control legislation. This means that by signing the lease, the tenant in effect gives consent to the transfer of responsibility for paying their hydro costs at some future date.

There is a concern that most tenants do not understand the significance of this clause. They are not informed of the details about at what time the landlord will withdraw from providing hydro service, how much hydro the tenant is using, how the rent will be reduced, and by how much it will be reduced. In other words, their signing of the lease agreement may not be based on an informed decision.

Case example: A Rental Building in North York

- The tenant moved into a unit in the building in February 2007.
- There was a clause such as the clause mentioned above in the lease that allowed the landlord to transfer the responsibility for hydro payment to the tenant.
- Earlier this year, the landlord notified the tenant that they were invoking this clause in the lease, and in exchange, would reduce the rent by \$75/month.
- The tenant received her first hydro bill from the smart metering supplier. The bill included \$200 for a deposit, \$20 for a service charge, and \$163 for hydro.
- This means she is paying more than twice the rent reduction amount offered by the landlord for the hydro charge alone.
- The tenant has made an application to the Landlord and Tenant Board (LTB) regarding the change in service. The hearing is not yet scheduled.

- The tenant has received a second notice from the smart meter supplier. There is a concern that her hydro will be shut off before the LTB makes a decision.

There is no clear guideline or rule in the RTA about who is responsible for vital services included in the rent in cases like this, where the tenant is disputing the withdrawal of services. The tenant in this case has sought assistance from a legal clinic for representation.

Assistance for Tenants with respect to Installation of Smart Meters:

The Advocacy Centre for Tenants of Ontario (ACTO) has recently prepared an information sheet that advises tenants on their rights under the RTA regarding smart metering, what they can do and where they can get help when they receive a letter from the landlord indicating the intention to smart meter the building, or when they are requested to sign a lease agreement including a clause to permit the landlord to meter their units separately for hydro service (see Appendix A).

Staff have had initial discussions with ACTO and FMTA about different ways the City can help tenants affected by smart metering.

It is recommended that the General Manager, Shelter, Support and Housing Administration consult and seek further input from the landlord and tenant communities and other stakeholders as appropriate on these matters, and report back to the next meeting of the Tenant Defence Sub-Committee.

CONTACT

Katherine Chislett, Director
Housing & Homelessness Supports & Initiatives
Shelter, Support and Housing Administration Division
Phone: 416-397-0260
Fax: 416-338-1144
Email: kchisle@toronto.ca

Gwynne Cheung, Policy Development Officer
Housing & Homelessness Supports & Initiatives
Shelter, Support and Housing Administration Division
Phone: 416-392-0643
Fax: 416-338-1144
Email: gcheung2@toronto.ca

SIGNATURE

Phil Brown
General Manager
Shelter, Support and Housing Administration Division

ATTACHMENT

Appendix A: Information Sheet for Tenants Prepared by ACTO – “Your Landlord Wants You to Start Paying for Electricity”

Appendix A

Your landlord wants you to start paying for electricity – Be Careful!

June 2008 Update by the Advocacy Centre for Tenants Ontario

In most high-rise apartments, landlords pay the electricity bill for the whole building. Landlords can't force tenants to start paying for electricity separately. **It only is legal to transfer the cost of electricity to tenants if the tenants agree and the rent is reduced.**

Situation A - If electricity is included in your rent, and you have NOT agreed to pay separately for utilities:

It is not a good idea for you to make a different agreement for your electricity at this time. The Ontario government plans to introduce rules to protect tenants who are told to start paying electricity for their apartments. These rules are not yet law. When they become law, they might be ignored if tenants agree to pay for electricity now.

Some tenants are getting letters from their landlords or companies their landlords have hired. A typical letter asks tenants to fill out a form which would let a sub-metering company charge the tenant for electricity use. Although the form says: "This form must be completed and returned," **you do not have to fill it out.**

If you enroll with a sub-metering company that the landlord hired, you will probably not be able to switch back. You will be responsible for paying your own electricity and possibly other fees and a deposit.

Tenant Questions

1. Can I save money if I pay my own electricity?

No one knows yet. The individual meters have only recently been installed and it is too soon to tell how much electricity you use. You are being asked to accept a rent reduction in exchange for paying your own electricity. Without knowing exactly how much electricity you use, you cannot know whether the rent reduction you are offered is fair or not. You could end up paying more for rent plus electricity than you now pay for rent.

2. Some forms provide options. Mine has two options. Which should I choose?

You don't have to fill out the form. Neither option is good. Option 1 will let the sub-metering company make deductions from your bank account. Option 2 makes you pay a security deposit which may or may not be legal. You should refuse to fill out the form.

3. Can my landlord evict me if I don't agree to pay my own electricity?

No. Failure to agree to sign the form is not grounds for eviction. If your landlord threatens you, get legal help immediately.

4. My landlord wants to inspect the wiring in my unit to install the smart sub-meters -- should I let them in?

The landlord can inspect the wiring in your unit, and can install smart sub-meters. If the landlord gives you a notice to allow a company to inspect your unit, you should co-operate. Just because they install a smart sub-meter or inspect your wiring, doesn't make you responsible to pay for the electricity. Even if they install the meters, the landlord will have to keep paying for electricity unless you actually sign the enrollment form.

Situation B - If electricity is included in your rent, but you signed a lease agreeing that the landlord could later make you pay for electricity:

A few tenants may have signed leases with a clause that says the landlord at any time can stop paying for electricity, reduce the rent, and make the tenant pay for electricity. Most of these clauses do not even say how much money would be taken off the rent. These clauses may not be legal. Many lawyers argue such clauses cannot be used by landlords.

Tenant Questions

1. My landlord says my lease makes me pay for electricity now. What should I do?

If you say the clause in the lease is no good and you don't need to pay for electricity, you might find your landlord doesn't listen to you. You might decide you need to fill out a form from the landlord or a sub-metering company because you are afraid of trouble from your landlord. If you do fill out a form so that you get the electricity bills, write a letter to your landlord at the same time. The letter should say that you are only going to pay the reduced rent and the new electricity charges "without prejudice". Also write that you feel forced by the landlord or any company the landlord hired. Your letter should say that you are filling out the form because you don't want to be evicted. Including these words in the letter to your landlord may protect your rights so that your rent can include utilities again. Before you give a copy of the letter to your landlord, make a copy for yourself as proof.

You could file a T2 Tenant's Rights application at the Landlord and Tenant Board if your electricity supply is threatened or cut off by your landlord, or if you can't enjoy your apartment because your landlord is threatening or harassing you.

For more legal information and help:

Contact your local community legal clinic. You can find out the contact information for your local clinic by visiting <http://www.legalaid.on.ca/en/contact.asp> or calling Legal Aid Ontario at (416) 979-1446 or 1-800-668-8258

Contact the Federation of Metro Tenants' Associations at the Tenant Hotline: (416) 921-9494, Monday - Friday 8:30 a.m. - 6 p.m. or at hotline@torontotenants.org

For more information about Smart Sub-Meters and time-of-use rates, visit:

Smart Meters Ontario web site: <http://www.smartmetersontario.ca>

To complain about your landlord's behaviour:

Contact the Minister of Municipal Affairs and Housing, the Hon. Jim Watson: 416-585-7000 or the Ministry's toll free number: 1-866-220-2290; and
Contact the Ministry's Investigation and Enforcement Unit: 1-888-772-9277.

To make sure the law is not unfair to tenants:

Contact your Member of Provincial Parliament. To find out who that is, go to:
http://www.ontla.on.ca/web/members/member_addresses.do?locale=en