

To: Tenant Defence Sub-Committee

From: Phil Brown, General Manager, Shelter, Support & Housing Administration Division

Date: April 18, 2008

**Re: Installation of Smart Meters in Rental Units**

In response to a request by Councillor Nunziata, I am providing an update about the Ontario government's smart meter initiative in multi-residential rental buildings, and information about the relevant provisions under the new *Residential Tenancies Act* (RTA).

Issue:

The new 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. This provision of the RTA is not yet enacted. Currently, transfer of electricity costs to tenants is 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.

Background:

Currently, 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.

Smart meters and 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.

Smart metering refers to the situation in which a licensed distributor (e.g. Toronto Hydro) individually meters each single dwelling unit (e.g. single houses or each condominium unit) with a smart meter and bills the owner of that unit directly. Smart sub-metering refers to the situation in which a licensed distributor provides the electricity service to the building's master meter and a separate person (i.e. smart sub-meter provider) allocates that bill to the individual units based

on the consumption and time of use in each unit through the smart sub-metering system. In this note, both smart meters and sub-meters are referred to as “smart meters”.

#### Smart Meter Initiative:

As part of the Ontario government’s action plan on climate change, the government intends to create a culture of conservation in Ontario and has set targets to reduce energy consumption. As part of the review of its energy policies, the government looked at additional measures to specifically support conservation, including different types of metering programs, such as smart meters and the regulatory oversight of metering and billing. The province originally announced goals of providing a smart electricity meter with every home and small business throughout Ontario by 2010, but the government has recently changed this target to an open-ended date through Bill 21.

In March 2006, the Government passed *Bill 21, the Energy Conservation Responsibility Act*, which enables implementation of the smart metering initiative in Ontario homes and small businesses. Regulations have recently been introduced to enable voluntary installation of smart meters in condominiums without requiring an amendment to the condominium declaration. While the Bill and the regulations do not cover implementation of smart-meters in multi-residential rental buildings, the initiative will eventually extend to rental buildings.

#### 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); and
- the landlord must ensure the appliances provided for the rental unit and other aspects of the rental unit satisfy the requirements for electricity conservation.

If a smart meter is installed in a vacant unit, the rules would require the landlord, before entering into a tenancy agreement, to 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. In smaller buildings (6 units or less), installation of smart meters may be cost prohibitive and so “ratio billing” would be permitted (section 138). The landlord would be permitted to split the building charge for a utility among each of the rental units in accordance with rules to be prescribed in the regulation. The utility charged will not be considered a service within the RTA definition of “rent” (i.e. the amount charged would not be restricted to the annual guideline percentage, or other rules related to permitted rent increases). The landlord will not be allowed to evict a tenant on the ground that the tenant fails to pay the utility charge.

The government has not yet enacted sections 137 and 138 due to a number of outstanding issues (such as customer fees and electricity rates) 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 entered into an agreement in writing with the landlord; and
- receives an adequate rent reduction as determined by the cost of the service based on the RTA rule.

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).

With respect to the current approach of using s.125 of the RTA to implement smart metering, 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
- there is currently no oversight over how the rent reduction should be calculated by the smart-metering providers to ensure that the tenants get a fair reduction.

The Federation of Metro Tenants' Associations (FMTA), in conjunction with the Advocacy Centre for Tenants of Ontario (ACTO), is producing an information sheet about what tenants should know when their landlord wants to smart meter electricity service in their apartment (copies will be sent to members of the Tenant Defence Sub-Committee when the information sheet is finalized).

The Tenant Hotline reports that they have recently received a number of calls from tenants of 55 Emmett Avenue (Ward 11) regarding their landlord's proposal to shift to smart-metering. The calls have been referred to the Tenant Defence Fund Outreach and Organizing Team (the Outreach Team). The Outreach Team advised the tenants of their right to refuse the change to smart-metering under the current RTA, and recommended that the tenants not sign the agreement to the service change for the reasons mentioned above.

#### Landlord Perspective:

In October 2007, the Chief Energy Conservation Officer awarded a landlord (Park Property Management) and a smart sub-meter supplier (Stratacon Inc.) a certificate of recognition for contribution to a culture of conservation by switching to smart-meters for electricity consumption in 2,500 rental apartments within the GTA. Park Property Management claimed that individual metering has helped the tenants control their electricity use and they have used 15 to 40 per cent less electricity depending on the household and unit size, with an average reduction of 33%. The company is planning to continue to implement the program in the remaining 5,000 apartments in its portfolio.

The tenants received rent reductions for change to smart metering. The reductions were calculated on the basis of the square footage of the units and, therefore, varied according to the unit size, e.g. the reduction for one-bedroom units may range from \$30-\$40 per month, and the reduction for two-bedroom units may range from \$40-\$45 per month in a gas-heated building. Tenants in electrically-heated buildings will receive larger rent reductions because they will have to pay higher costs for hydro (i.e. both electric heat and other electricity use, such as lighting and appliances).

Recently, the landlord of a bulk-metered rental building at 55 Emmett Avenue in Toronto proposed installation of smart meters in the units and sent a letter to the tenants notifying them about the proposed change. The letter indicated that the tenants' participation is voluntary, but should they wish to pay hydro directly, their lawful rent would be reduced by a specified amount.

The Greater Toronto Apartment Association (GTAA) supports the conversion to individual metering. The GTAA notes that most tenants who switched to smart meters have realized savings. They became more energy conscious when they paid hydro directly and as a result the rent reductions have exceeded their actual hydro costs. The organization found that about 50 to

70 per cent of tenants broke even or did better <sup>1</sup>. They also noted that where tenants refused the smart metering option, smart metering occurred upon turnover and the new tenants paid for electricity separate from their rent.

#### Tenant Perspective:

The tenant advocacy community, led by the Low-Income Energy Network (LIEN), a group of environmental and affordable housing advocates including ACTO, supports the general direction towards energy conservation. However, they 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. They argue that smart metering in the multi-residential rental sector is not cost-effective, is not an effective method to achieve provincial conservation goals, and is not fair to tenants, for the following reasons:

(a) Tenants would be worse off financially:

Research indicates that in 17 out of 18 scenarios reported by LIEN, tenants would spend more money annually as a result of smart metering than they could save. Data from the smart-meter supplier who installed sub-meters in one building with 110 units showed that 41% tenants were paying more, 12% broke even, and 47% were paying less.

(b) Limited conservation opportunity:

The bulk-metered multi-residential rental sector accounts for only a relatively small portion (about 7%) of electricity use in Ontario, and less than 30% of Ontario apartments are electrically heated. Relative to electrically heated buildings, conservation potential in non-electrically heated buildings is not as significant, particularly given that tenants have limited opportunities to reduce electricity use (i.e. it is the landlords who decide what appliances will be provided).

(c) Incentive to reduce energy shifts to the party least able to implement improvements:

Responsibility and incentive for maintaining energy efficiency primarily rests with the landlord. Smart-metering shifts the responsibility and incentive to tenants, however, tenants have no control over such things as the efficiency of electrical appliances or insulation of their apartments, nor do they have authority to do in-suite retrofits to improve energy efficiency.

(d) Vulnerable groups put at risk:

Tenants as a group have an over-representation of vulnerable groups -- people with low incomes, persons with disabilities, seniors, single parent families, and recent immigrants. Vulnerable groups will be hurt by smart-metering and rising energy costs because they would

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<sup>1</sup> Quote from the Toronto Star, March 15, 2008 – Mr. Brad Butt's response to the reporter.

not be shielded from sudden increases. When such costs are included in the rent, increases due to rising utility costs tend to occur more gradually.

(e) Unilateral change to contracts:

If the government enacts section 137 of the RTA to allow landlords to smart-meter without tenant consent, this would be a government mandated breach of the tenancy contract between the landlord and the tenant. Tenants will lose what they contracted for when they first rented their unit -- stable rents with utilities included. This is a fundamental and valuable term of many residential rental contracts.

Tenant advocates recommend that the government not proceed with smart metering in the multi-residential rental sector, but instead focus on:

- Tenant-focused energy efficiency programs that include energy audit of the building and conservation measures such as compact fluorescent light bulbs, appliances and programmable thermostats, as well as tenant education, bill assistance and emergency assistance.
- Conservation and demand management programs for landlords, including programs where the government or the Local Distribution Company undertakes energy efficient retrofits in a building, and finances the project through the savings on the landlord's electricity bills.
- Education and social marketing targeted at landlords and tenants to change attitudes about conservation, and give landlords and tenants the information they need to reduce usage;
- Further studies on achieving energy conservation in the rental residential sector, without increasing the financial burden on tenants, including pilot projects to determine the impact of the above-mentioned suggestions on energy conservation; and
- A detailed and neutral analysis of the impact of smart metering on energy usage in the rental sector.

City's Recommendation on Smart Metering:

In 2004 when the Ontario Government began consultation with stakeholders on the 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).

Staff contacted the Ministry of Municipal Affairs and Housing about the status of the RTA provision (s. 137) and regulations regarding the smart meter initiative and was advised that there is no specific timeline set for the passage of this section, and no regulations have been drafted to guide implementation. Staff will keep the Sub-Committee apprised of the status of the RTA on this matter.

In the meantime, the TDF Outreach Team will continue to provide advice to tenants in situations where smart metering is proposed about their right under the RTA to refuse the service change. Where the tenant chooses to make the change, the Outreach Team will provide advice for tenants about how to ensure the proposed rent reduction in a fair amount using its information sheet. In addition, this information will be posted on the FMTA website and on our Division's website.

Phil Brown