

Further Report on Installation of Sub-meters in Residential Rental Units and Its Impact on Tenant Affordability

Date:	December 3, 2008
To:	Tenant Defence Sub-Committee
From:	General Manager, Shelter, Support and Housing Administration
Wards:	All
Reference Number:	

SUMMARY

This is a second report on issues related to installation of sub meters in residential rental buildings and the impact on housing affordability. The first report was submitted to the Tenant Defence Sub-Committee (the Sub-committee) June 17, 2008. This report provides information about feedback from a consultation with stakeholders on the recommendations made by the Sub-Committee in response to the first report, including landlord groups, tenant groups, housing committees, other City divisions, and provincial ministries and agencies dealing with energy conservation. Input from Toronto Hydro about the Sub-Committee's recommendations was also included at the request of Community Development and Recreation Committee.

This report is not about energy efficiency nor actions that may reduce the environmental impacts of private rental housing. It is not a report about whether sub-metering of rental residential properties is an effective means for energy conservation. Rather, this report is concerned with the issue of a fair transfer of responsibility for payment of utility costs from the landlord to the tenant. Provisions in the Residential Tenancies Act (RTA) governing transfer of hydro costs have not yet been enacted, and concerns have been raised about transfers that have been occurring in the absence of RTA regulations specific to hydro transfers. Specifically, that there is limited protection for tenants with respect to enforcing their rights to agree or not to agree with sub-metering and getting a fair rent reduction in exchange for taking on the responsibility to pay for hydro.

This report makes a number of recommendations aimed at addressing the situation. The Minister of Municipal Affairs and Housing is encouraged to quickly enact provisions in

the RTA and to take other steps to assist tenants until such time as the provisions become law, including ensuring that tenants have sufficient information to exercise their choice and receive fair rent reductions. In addition, the Minister of Energy and Infrastructure is requested to license sub-meter companies providing services to rental residential properties.

RECOMMENDATIONS

The General Manager of the Shelter, Support and Housing Administration Division recommends that City Council:

1. request the Minister of Municipal Affairs and Housing to move quickly to enact sections 137 and 138 of the Residential Tenancies Act, and develop regulations which will ensure that comprehensive and effective energy efficiency measures are in place prior to hydro being removed from the rent, and that rent reductions be calculated in a fair and transparent manner;
2. until such time as sections 137 and 138 are enacted, request the Minister of Municipal Affairs and Housing to immediately take steps to improve protection for tenants from negative impacts of sub-metering, including:
 - a. implementing interim information and communication programming to support tenants in understanding and enforcing their rights under section 125 of the Residential Tenancies Act;
 - b. legislative amendments to section 125 to ensure fair practices in the transfer of hydro costs from landlords to tenants, including requirements for informed consent; and
 - c. regulatory amendments to section 125 to ensure a fair and transparent determination of rent reductions;
3. request the Minister of Energy and Infrastructure to review the provincial regulatory and incentive environment as it applies to sub-metering in multi-residential rental properties, and to move quickly to put in place measures to ensure fair practices and protect tenants, including licensing of sub-meter providers operating in rental residential buildings;
4. request the Chair of the Cabinet Committee on Poverty Reduction to support enhanced funding to programs that help low-income tenants to pay hydro costs when they cannot afford the cost of this vital service, and to take other actions towards reducing energy poverty;
5. delegate authority to the General Manager, Shelter, Support and Housing Administration, to allocate up to \$25,000 from the Tenant Defence Grant Fund to support tenant dispute applications, in partnership with one or more Toronto

- community legal clinics, on issues related to the removal of hydro as a service included in the rent, and to report to the Tenant Defence Sub-committee on the results of any cases funded under this recommendation; and
6. send a copy of this report to the Ontario Energy Board, Ontario Power Authority, Ontario's Chief Energy Conservation Officer, Ministry of Energy and Infrastructure, Ministry of Municipal Affairs and Housing, the Landlord and Tenant Board, and Toronto Hydro to advise of Council's concerns about tenant protection and fair rent reductions where hydro is removed as a service included in the rent.

Implementation Points

Recommendation 1 is about actions the provincial government is requested to take to enact sections of the Residential Tenancies Act aimed at establishing specific rules for the transfer of hydro costs from the landlord to the tenant. Recommendation 2 is about interim actions to protect tenants until such time as those sections are enacted. Recommendation 3 requests that regulations governing the practices of sub-meter providers be established. Recommendation 4 supports enhanced financial support for programs that help tenants unable to pay their hydro bills. Recommendation 6 supports recommendation 1 by ensuring that information about Toronto's concerns is shared with the relevant bodies.

The financial assistance recommended in this report (recommendation 5) would support group(s) of tenants, in partnership with legal clinics, to take action at the Landlord and Tenant Board in situations where the tenants and the legal clinic believe that their landlord has unfairly removed hydro as a service included in the tenants' rents, and transferred responsibility for payment of hydro bills to the tenants.

FINANCIAL IMPACT

The \$25,000 grant proposed in this report will come from the proposed 2009 Tenant Defence Fund, included in the Shelter, Support and Housing Administration Division 2009 Operating Budget submission.

The Acting Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meetings on April 24 and June 17, 2008, the Tenant Defence Sub-Committee (the Sub-Committee) considered a communication and a report from the General Manager, Shelter, Support and Housing Administration Division, regarding the installation of Sub meters in Residential Rental Units and Its Impacts on Tenant Affordability:

<http://www.toronto.ca/legdocs/2008/agendas/committees/td/td080617/it002.pdf>)
<http://www.toronto.ca/legdocs/2008/agendas/committees/td/td080424/it006.pdf>

The Sub-Committee recommended that:

1. City 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; and
2. City Council request the Province of Ontario to:
 - a. consider and explore possible ways of implementing a form of mandatory oversight in cases of voluntary smart-meter conversion, which includes:
 - i. ensuring that rent reductions are calculated fairly; and
 - ii. ensuring that tenants are fully informed of their rights under s.125 of the *Residential Tenancies Act* (RTA); and
 - b. put on hold the installation of "smart meters" in residential rental units until such time as the City has thoroughly considered all the outstanding issues, and appropriate legislative amendments and/or regulations have been brought into force by the provincial government.

The Community Development and Recreation Committee considered the Sub-Committee's recommendations at its July 4, 2008 meeting. The Committee recommended that the recommendations from the Sub-Committee be referred to the General Manager, Shelter, Support and Housing Administration, for a report to the Committee. It also requested the General Manager, Shelter, Support and Housing Administration, to discuss this matter with Toronto Hydro to obtain:

1. its comments on the Sub-Committee's recommendations; and
2. input on Toronto Hydro's ability to install smart meters; and its recommendations on the installation of smart meters in rental housing units.

ISSUE BACKGROUND

This report follows up on the recommendations of the Tenant Defence Sub-Committee (June 17, 2008) and the Community Development and Recreation Committee (July 4, 2008). It provides information about the consultation staff undertook on issues of sub-metering and affordability, and makes recommendations for actions to ensure that when hydro is removed from the rent and the tenant is required to pay directly, the process and

calculations are fair. Input from Toronto Hydro about the Sub-Committee's recommendations, its ability to install sub-meters in residential rental buildings and its recommendations on the installation of sub-meters in rental housing units is also included, along with information obtained from review of reports, government web sites, and communications from concerned tenants.

Types of Metering

This report is primarily about sub-metering and impacts on tenants. There are a number of types of metering.

- Individual metering means a separate meter has been installed for the rental unit, and the tenant is billed directly by the local distribution company based on their consumption. The tenant is a direct customer of the local utility, e.g. Toronto Hydro.
- Sub-metering refers to an approach that permits a determination of the amount of hydro used in each rental unit. The landlord contracts with a sub-metering company which apportions the consumption and cost from the bulk meter to each tenant unit and bills the tenant for their share of the landlord's hydro bill. The landlord is the direct customer of the local utility, and not the tenant. Instead, the tenants are clients of the sub-metering company hired by the landlord.
- Smart metering refers to a way of determining the amount of hydro used by the time of the day it is used. A smart meter can be either an individual meter or a sub-meter, e.g. smart sub-meters and smart individual meters. When "time of use" billing comes into effect, smart metering will permit clients to influence their hydro costs by using electricity at different times. For example, during peak times, rates might be in the range of 9 cents per kwh and during non-peak times in the range of 2 cents per kwh.

Rules on Utility Costs and Rents under the Residential Tenancies Act (RTA)

For many tenants in Toronto (over 70%), hydro is a service included in their rent. Hydro cost increases are expected to be covered by annual guideline increases determined by the Province. The guideline is based on the Ontario Consumer Price Index, which reflects cost changes from all consumer goods and services including utilities. If utility costs increase significantly, the landlord can apply for a rent increase above the annual guideline. After the landlord is granted an above-guideline increase for a significant increase in utility costs, if the utility costs subsequently decrease significantly, the landlord must reduce the rent (rule of "cost no longer borne", section 128(3)). The RTA also permits a landlord to apply for an above guideline rent increase to recover the cost of capital expenditures that promote energy or water conservation (section 126).

The services, utilities, and other facilities to be included in the rent are generally determined when the tenant first moves into the unit. These terms generally continue for as long as the tenant remains in the unit, unless the tenant and landlord jointly agree to an addition (section 123) or reduction/discontinuation of certain services or facilities,

including hydro (section 125). If a reduction or discontinuation of a service or facility takes place without the consent of the tenant, the tenant may apply to the Landlord and Tenant Board (LTB) for a rent reduction (section 130).

Section 125 permits the transfer of hydro from being included in the rent, to having the tenant pay hydro separately, in return for a rent reduction. The tenant must voluntarily agree to the transfer. No requirements are set out in the RTA to establish the elements of a voluntary agreement or what information must be provided to the tenant to inform their decision. While the landlord is required to reduce the rent by an amount equal to the actual cost to the landlord of the service/facility before the transfer, no specific direction is given on how the reduction should be calculated (e.g. tenants' actual usage, average by unit type, square footage of the unit) and whether the reduction should also take into account other charges that the tenant may be required to pay (e.g. administration fees).

The RTA includes two sections (sections 137 and 138) that aim at supporting hydro conservation in rental housing, however, these sections are not yet enacted. In contrast to "discretionary sub-metering" under s.125, sections 137 and 138 would permit the landlord to remove hydro from the rent without the tenant's agreement, provided that the landlord meets a number of conditions, such as making conservation improvements and providing the tenant with information about hydro use for their unit.

This report is not about Energy Conservation

During the course of our consultations, it became clear that landlords, tenants and others were all very supportive of actions to address climate change and create a sustainable energy future. Landlords contend that a key reason for supporting sub-metering is that it can contribute to the province's desire for a conservation culture, and the City's desire to reduce green house gas emissions. We also heard that tenants are strong supporters of actions to protect our environment, and would welcome supports to help them to continue contributing to conservation efforts in Toronto. However, they are sceptical that sub-metering as it is currently being implemented can have a positive impact on the environment as it may actually remove the incentive for landlords to undertake energy efficiency improvements, and they are concerned that it may worsen poverty.

However, this is not a report about how to improve energy conservation in rental housing. Instead, this report considers the issues of primary concern to the Tenant Defence Sub-Committee, including the processes used to remove hydro as a service included in the rent, the ability of tenants to be aware of and enforce their rights, fairness of the rent reduction amount, and the effectiveness of current legislation in protecting tenant rights and affordability.

COMMENTS

Consultation on Sub-Metering

From June to September 2008, staff of the Shelter, Support and Housing Administration Division conducted consultations with a wide variety of stakeholders to seek further input on the installation of smart sub-meters in multi-residential rental buildings and its impact on housing affordability for tenants. Most consultations were undertaken through separate or joint meetings, some were through telephone communications or written submission, and one landlord group (Landlord's Self Help Center) administered a survey to 100 of its members.

The following housing committees, landlord and tenant advocacy groups, relevant city divisions, provincial energy-related agencies were also contacted:

Housing Committees:

- The Rental Housing Advisory Committee (RHAC)
- Immigrant and Refugee Housing Committee (IRHC), Alternative Housing and Services Committee (AH&S), and Housing Help Network (HHN) - joint meeting

Landlord Groups:

- Greater Toronto Apartment Association (GTAA)
- Landlord's Self Help Centre (LSHC)

Tenant Groups:

- Advocacy Centre for Tenants Ontario (ACTO)
- Federation of Metro Tenants' Association (FMTA)
- Centre for Equality Rights in Accommodation (CERA)

Hydro Services

- Local electricity distribution company: Toronto Hydro
- Sub-metering company: Stratcon and Enbridge Electric Connections

City Divisions:

- City of Toronto Energy Efficiency Office (EEO) and City of Toronto Environment Office (TEO)
- Municipal Licensing & Standards Division (ML&S)

Provincial Ministries and Agencies:

- Ontario Energy Board (OEB)
- Ontario Power Authority (OPA)
- Ontario Ministry of Energy (MOE)
- Ontario Ministry of Municipal Affairs and Housing (MMAH)

For most of the above groups, the consultation focused on the following themes developed based on the Sub-Committee and the Community Development and Recreation Committee recommendations and discussions:

1. Perspective on installation of sub-metering in multi-residential rental buildings
2. Impact of sub-metering on landlords and tenants
3. Fairness in rent reductions in transfer of electricity costs to tenants under section 125
4. Voluntary consent under RTA section 125
5. Proclamation of RTA sections 137 and 138
6. Regulation of sub-metering companies doing business in the residential rental sector
7. Incentives for energy efficiency improvements for landlords and education programs for tenants to help maintain rental affordability

In addition, a number of reports commissioned by the OPA and the Low-Income Energy Network (LIEN) and various other research was considered, and we received communications from tenants concerned about this matter.

Summary of Consultation Findings

The following are the key points of the stakeholders' feedback and input grouped under the major themes.

1. **Perspective on installation of sub-metering in multi-residential rental buildings**

Landlord groups, the City's Energy Efficiency Office, sub-metering companies and Toronto Hydro share the view that sub-metering is a good approach to energy conservation, because when tenants pay their hydro costs, they will try to reduce their consumption. They support sub-metering on the basis that heavy hydro users would not burden tenant households that use less electricity, and the majority of tenants would either break even or be better off financially as a result of the transfer. However, it is generally agreed that actions by both the landlord and the tenant are necessary in order to maximize energy conservation.

Tenant groups generally are concerned about sub-metering because sub-metering means tenants have to pay for their own hydro outside of their rent, resulting in less certainty for managing their budgets. They believe there is not enough information available for tenants to understand and exercise their rights whether

to agree or disagree with sub-metering, and are concerned that there is insufficient regulation in the RTA to ensure a fair and transparent rent reduction that would offset both the cost of consumption and other related costs. They are also concerned that tenants' ability to conserve energy is not as significant as the landlords, who can undertake capital improvements aimed at energy efficiency, or replace appliances with more efficient models. As a result, relative to actions that the landlord can take, tenants are limited in their ability to substantially reduce hydro costs.

Some tenant groups believe that while sub-metering is not in and of itself a way to achieve energy conservation, it can be a good approach if it is part of a multi-faceted strategy to reduce electricity consumption that includes grants for capital improvements and tenant education, measures to protect tenants from utility price hikes, unilateral and unregulated changes to sub-metering, inefficient appliances and ineffective HVAC systems.

2. **Impact of sub-metering on landlords and tenants**

Housing committees believe removing hydro service from the rent and requiring tenants to pay for hydro would put tenants at greater risk of energy poverty and not being able to afford paying their rent and other life necessities. In particular, persons on fixed income or with low incomes may not be able to cope with rising hydro costs or related costs (such as administrative costs). This may worsen their financial situation and put them at greater risk of homelessness.

Low-income tenants, elderly tenants, households that remain in their units for most days, and tenants with disabilities (especially those needing hydro for medical equipment) are some of the groups that may end up paying a higher total amount for rent and hydro than before hydro was removed from the rent. These groups may need financial assistance to ensure that this vital service remains accessible. The Ontario Energy Board (OEB) is currently considering whether there is a need for providing a rate assistance program for low-income households. Both landlord groups and tenant groups support rate affordability assistance programs for low-income tenants.

Removing hydro from the rent may reduce the incentive for landlords to improve the energy efficiency of buildings as any energy savings may result in a greater benefit for the tenants than the landlord. However, when landlords do make capital improvements for energy efficiency, the costs of the improvements may result in rent increases above the guideline. Landlords comment that even when tenants pay directly for hydro, landlords are still very much involved in making improvements for energy efficiency because they remain responsible for common area costs and because such improvements can make their buildings more competitive in the rental market.

3. **Fairness in rent reductions in transfer of electricity costs to tenants under section 125**

Tenant groups are concerned about the lack of clear direction in the RTA on how the rent reduction should be calculated under section 125. There is no mandatory oversight or detailed direction on the calculation of the rent reduction. Sub-metering providers are currently using a pro-rata approach based on square footage of the rental units or the unit type to determine the amount of rent reduction, rather than basing the reduction on the tenant's actual consumption. As a result, a tenant that used a relatively high amount of hydro might not receive a reduction equivalent to their actual costs, and tenants that used relatively less hydro, might have a net gain. Furthermore, tenants must also pay new administrative fees.

Some tenant groups support having sections 137 and 138 of the RTA enacted as soon as possible, along with regulations that would ensure that rent reductions for tenants are fair and include both actual costs based on consumption and related costs, such as installation and administrative fees, to help offset the hydro costs they would pay after sub-metering. Landlord groups and sub-metering companies believe that the approaches used to determine rent reductions are fair and in keeping with legislative requirements. They would support enactment of sections 137 and 138 to create a level playing field for all rental properties and make sub-metering easier to implement, but are concerned about the potential for costly regulatory requirements.

4. **Voluntary consent under RTA section 125**

While tenants and landlords may agree to removing hydro from the rent under s.125, the RTA provides no direction on what constitutes a voluntary consent. Some landlords have added clauses to their tenancy agreements that give the landlord authority to unilaterally withdraw hydro as a service included in the rent at a time of the landlord's choosing.

There is no direction on steps that must be taken to ensure informed voluntary consent, and there is no simple way for a tenant to opt out of an agreement to sub-meter. Instead, individual tenants concerned about the transfer must file applications with the Landlord and Tenant Board for case by case determinations.

Rules need to be improved to help ensure tenants have all of the information they need to make informed decisions when deciding to remove a service from the rent. Both landlords (GTAA) and tenant/housing groups believe more work needs to be done on educating tenants to be aware of their rights, and would support such efforts.

There have been harassment complaints made by tenants to the Ministry of Municipal Affairs and Housing Investigations Unit. Legal clinics have been

contacted by a few tenants about disputing discretionary sub-metering and a number of tenant applications are currently before the Landlord and Tenant Board.

5. **Proclamation of RTA sections 137 and 138**

Both landlord groups and tenant groups have not supported enactment of s.137 and s.138 in their current form.

Landlord groups are concerned that the rules for rent reduction calculations and energy efficiency requirements for smart sub-metering may be difficult to administer, that regulated requirements for energy conservation improvements may be too costly, and that rent increases and/or incentive programs may not fully cover the costs.

Tenant groups and housing committees are concerned about any rule that would permit a landlord to amend the tenancy agreement without the tenant's consent. However, some tenant groups now support enactment on the basis that the current situation under section 125 is worse.

6. **Regulation of sub-metering companies doing business in the residential rental sector**

There is currently no requirement for licensing of sub-metering providers for rental residential buildings. The providers are not required to meet any regulatory standards, meaning that tenants do not have assured protection on rates charged, disconnections or requirements for dispute resolution, although one provider advised that he is voluntarily applying standards used for condominiums to the rental sector. Sections 137 and 138, require that providers be licensed, however, these sections are not enacted.

As it may be some time before sections 137 and 138 are enacted, tenant groups have suggested that the Ontario Energy Board and the Minister of Energy develop and implement as quickly as possible licensing and regulation requirements for all companies installing sub-meters in rental housing, including a code of conduct to govern the customer service relationship. This could occur in advance of sections 137 and 138 being enacted. Landlord groups and sub-metering providers are also generally supportive of licensing.

7. **Incentives for energy efficiency improvements for landlords and education programs for tenants**

There was general consensus that to achieve the goal of energy conservation, both landlords and tenants have to work together. Landlords must be committed to improving the overall energy use in the buildings and tenants need to have a good understanding of and motivation for energy conservation.

Incentive programs that reduce the cost of building improvements, appliances and other conservation efforts can encourage landlords to undertake this work, and can reduce the rent increases that might otherwise pass through to the tenants.

Both landlord groups and tenant groups support development of government incentives for landlords to improve the energy efficiency of their buildings and education programs and materials for tenants aimed at helping them conserve energy and understanding their rights.

Few incentive programs for energy improvement have included requirements about protection for tenants or encouraging tenant participation. All current and future conservation incentive programs for rental housing should include requirements for informing tenants of their legal rights, fair process for transferring hydro out of the rent, and fair rent reduction calculations. The GTAA is supportive of more information and education for tenants about their rights under the RTA, including section 125.

Input from Toronto Hydro

Toronto Hydro is a licensed utility distributor and the rates it charges customers are regulated. It also supports regulating sub-metering providers working in rental buildings.

Toronto Hydro supports requesting the province to implement mandatory oversight in voluntary sub-metering conversion.

They are interested in approaches that would increase Toronto Hydro's individual, regulated metering of tenants, rather than sub-metering, as the individual metering approach will ensure that these customers are accurately billed for the power consumed in their units alone, through the standard regulated rates and within a comprehensive customer service framework.

They are willing to consider actions to increase the installation of individual meters in rental housing units and work closely with the City to address issues relating to low-income tenants.

Assessment of Consultation Findings

There is a clear concern by tenant and housing organizations that in view of the way that section 125 is being implemented, tenants cannot wait any longer for the protection that would be available under sections 137 and 138. Therefore, this report recommends that Council request the Minister of Municipal Affairs and Housing to quickly enact sections 137 and 138 of the Residential Tenancies Act and develop regulations which will ensure that comprehensive and effective energy efficiency measures are in place prior to hydro being removed from the rent. The report also recommends that rent reductions be calculated in a fair and transparent manner such that rent reductions for tenants would be

based on both consumption and related costs to the tenant, such as installation and administrative fees, and would fairly offset the hydro costs tenants would pay after hydro is removed from the rent.

Ministry of Municipal Affairs and Housing staff advise that the provincial government intends to undertake a consultation program and further research in advance of enacting sections 137 and 138. No information is available currently about when the consultation will start. As it appears that there may be a delay before sections 137 and 138 will be enacted, this report recommends that the Minister immediately implement interim actions to improve protection for tenants from negative impacts of sub-metering. Recommended actions include implementing education programs about tenant rights under section 125, amending the RTA to ensure fair practices in the transfer of hydro costs from landlords to tenants, including requirements for informed consent, and amending the regulations to ensure a fair and transparent determination of rent reductions.

There is no licensing regime currently for sub-meter companies operating in rental residential housing, although there is one for sub-metering in condominium corporations. Licensing can be an effective tool in regulating the activities of sub-meter companies to ensure fair practices and protect tenants. While there are a number of incentive programs for energy efficiency improvements and conservation, more work could be done to include tenants. Incentive programs are important for residential rental properties because they can reduce rent increases that might otherwise be charged to tenants for utility cost increases and capital improvements related to energy efficiency and conservation. Therefore, this report recommends that the Minister of Energy and Infrastructure be requested to review the provincial regulatory and incentive environment as it applies to sub-metering in multi-residential rental properties, and to move quickly to put in place measures to ensure tenants are protected, including licensing of sub-meter providers operating in rental residential buildings.

Ontario's Chief Energy Conservation Officer is required to identify any government policy or legislation that results in a barrier to the development or implementation of electricity conservation measures. In his 2008 Annual Report, the Chief Energy Conservation Officer identified sub-metering as a barrier to conservation for many of the same reasons identified in this report, and recommended that "the Ministry of Energy and Infrastructure and the Ministry of Municipal Affairs and Housing should collaborate to develop rules and guidelines to ensure the fair implementation of in-suite metering in multi-unit residential buildings." This recommendation is consistent with the recommendations made in this report that both Ministries have a role and can take action to address concerns raised about sub-metering in residential rental buildings.

Fast action on licensing sub-metering in rental residential properties is recommended. Furthermore, the RTA will require licensing when Sections 137 and 138 are enacted. Licensing, and related standards of business practice and conduct, should include the following:

- a. requirements for fair rent reduction calculations that adequately compensate tenants for costs resulting from the hydro transfer, including administration or customer fees, and provision of information to tenants about the rent reduction calculations and evidence in support of the calculations;
- b. a complaints protocol with appropriate remedies;
- c. requirements for ensuring tenants are informed of their right to refuse removal of hydro from the rent;
- d. a protocol for deposits and service discontinuation aimed at minimizing barriers to occupying rental housing and limiting termination of service; and
- e. ensuring that tenants may take advantage of cost savings from time of use pricing when available and are not negatively impacted by the long term decisions of the landlord in setting rates.

When hydro is included in the rent, and the landlord does not pay the bills, the City can take action to restore hydro or halt a disconnection using the Vital Services by-law. However, when hydro is not included in the rent, and the tenant is in arrears, the Vital Services by-law does not apply. Tenants are very much at risk of energy poverty as many are already paying rents that they cannot afford (46.6% of tenant households in Toronto pay more than 30% of their income on rent, Census 2006). With little or no financial cushion, low-income tenant households may not be able to ride out fluctuations in hydro costs, sustained rate increases, or increases in fees and charges. As a result, they may have to choose between hydro and other necessities of life, or run the risk of becoming homeless.

There are assistance programs for low income tenants that have not been able to pay hydro or gas heating bills, such as the emergency Energy Fund and the Winter Warmth Fund, however, these funds are intended for short-term assistance (e.g. the Emergency Energy Fund can be accessed one time only and the Winter Warmth Fund applies only to the winter months). Further, in a sub-metering situation, it is not clear whether the sub-metered tenant who is not a customer of the contributing utilities (Toronto Hydro and Enbridge) are eligible for the assistance; and even if they are eligible, it is not clear whether the funds would cover some of the costs in the sub-metered bill.

The Ontario Energy Board (OEB) is currently considering whether there is a need for providing a rate assistance program for low-income households. The OEB hosted a stakeholders conference from September 22 to September 25, 2008 to examine issues associated with low-income energy consumers, however, no action has been taken yet as a result of the conference.

Poverty issues in general are currently being considered by the province as part of its Poverty Reduction Strategy. Therefore, this report recommends that the Chair of the Cabinet Committee on Poverty Reduction be requested to support enhanced funding to

programs that help low-income tenants to pay hydro costs when they cannot afford the cost of this vital service, and to take other actions towards reducing energy poverty.

While there are rules under the RTA for transfer of hydro currently, there is uncertainty about how they are to be applied. Key concerns are the processes used for obtaining consent from tenants and the lack of information available to tenants in giving their consent, and also about how the rent reduction given in return for removing hydro from the rent should be calculated and what should be included. A number of cases are currently before the Landlord and Tenant Board, which are being monitored by staff. We may receive requests for financial help for new cases. The current Tenant Defence Fund program does not give staff authority to approve grants from the Tenant Defence Grant Fund for this purpose, and the Council approval process may not be quick enough to respond to such requests in the time needed. To that end, this report recommends that up to \$25,000 from the Tenant Defence Grant Fund be made available to support some tenant dispute applications related to removing hydro from the rent, in partnership with one or more Toronto community legal clinics. Staff would report back to the Tenant Defence Sub-committee on the results of any cases funded under this recommendation.

Finally, this report recommends that the results of the consultations be shared with organizations having an interest and mandate in this area, for their information and consideration. Copies would be sent to the Ontario Energy Board, Ontario Power Authority, Ontario's Chief Energy Conservation Officer, Ministry of Energy and Infrastructure, Ministry of Municipal Affairs and Housing, the Landlord and Tenant Board and the Ontario Cabinet Committee on Poverty Reduction.

Conclusion

Low-income tenants are vulnerable when hydro cost is removed from their rent and they have to pay for it directly. While having tenants pay directly for their hydro usage may help to reduce consumption, those who cannot afford to pay are put at risk of energy poverty and even losing their housing, as they struggle between paying their rent or the hydro cost, and other living necessities.

Concerns have been raised about the transfer of hydro costs from landlords to tenants using sub-meters, in advance of provisions in the Residential Tenancies Act (RTA) on smart meters and smart sub-meters being enacted. There is little guidance on ensuring a fair process for consent, and a fair rent reduction to offset the cost of paying hydro directly. There is currently no licensing for sub-metering companies with respect to rental residential properties. Energy efficiency improvements in rental buildings may result in rent increases, unless there are incentive programs to offset costs.

This report recommends that the province move quickly to enact RTA sections 137 and 138 in order to better protect tenants. Although these sections would remove the tenant's right to refuse having hydro removed from the rent, the trade-off is that the rent reduction amount should be fair and transparent, with proper notice.

Until such time as RTA sections 137 and 138 are enacted, a number of recommendations are made for actions that can start now, including legislative and regulatory amendments, and licensing of sub-metering in rental residential properties. In addition, education activities are recommended to inform tenants of their rights.

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