TORONTO

REPORT FOR ACTION

# Status of Suite Metering in Rental Buildings in Toronto

**Date:** September 27, 2017
**To:** Tenant Issues Committee
**From:** General Manager, Shelter, Support and Housing Administration
**Wards:** All

## SUMMARY

This report responds to City Council's request on March 28 and 29, 2017 to report back to the Tenant Issues Committee on the status of sub-metering in rental buildings in Toronto.

Unit smart meters and unit sub-meters (collectively, known as suite meters) make it possible for landlords to remove electricity as a service included in a tenant's rent and transfer responsibility for the cost of electricity usage from the landlord to the tenant.

In Toronto's rental housing market, with low vacancy rates, lack of new affordable rental housing supply, and growing rental unaffordability for many Torontonians, particularly those living on a low-income, suite metering can create additional financial burden and uncertainty for tenants who may be struggling to maintain their housing.

The issue of tenant protection is an important consideration in suite metering. Tenants and tenant advocates have expressed concerns that suite metering legislation does not provide clear enough guidelines on the implementation of suite metering or oversight of suite metering services. Further provincial measures to strengthen tenant protection may be needed.

The report provides comments on the history and current legislative framework for suite metering in residential rental properties and the impact on rental housing affordability in Toronto. The report does not provide information on the effectiveness of suite metering as a means for energy conservation.

## RECOMMENDATIONS

The General Manager, Shelter, Support and Housing Administration, recommends that the Tenant Issues Committee receive this report for information.

## FINANCIAL IMPACT

There are no financial impacts associated with this report.

## EQUITY IMPACT

Housing affordability impacts a range of equity seeking groups including people at risk for or experiencing homelessness, the working poor, youth, seniors, Indigenous peoples and other vulnerable groups.

## DECISION HISTORY

On its meeting on March 28 and 29, 2017, Toronto City Council adopted item LS17.1 "Toronto's New By-law for Apartment Buildings", which included recommendation 44 requesting the Deputy City Manager, Cluster A to report to a future meeting of the Tenant Issues Committee on the status of sub-metering in rental buildings in Toronto.
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.LS17.1

On its meeting on September 30 and October 1, 2009, Toronto City Council adopted item CD26.5 "Protecting Tenants from Unregulated Electricity Sub-Metering in Apartment Buildings" which consisted of Council motions put forth by Councillor Davis and supplementary staff report "Ontario Energy Board Decision on Installation of Smart Sub-Metering Systems in Rental Residential Buildings". The report provided information on strategies available to landlords and to tenants who currently have their units sub-metered, as well as comments on measures which will increase fairness of sub-metering in residential rental properties.
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.CD26.5#

On its meeting on January 27 and 28, 2009, Toronto City Council adopted CD21.4 "Installation of Sub-meters in Residential Rental Units and Its Impact on Tenant Affordability Units" which provided two reports on issues related to installation of sub-meters in residential rental buildings and the impact on housing affordability.
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.CD21.4

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 sub-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. (Recommendation 13 in the Report on "Response to the Ontario Government's Consultation Paper on Residential Tenancy Reform", adopted by Council June 24, 2004).
http://www.toronto.ca/legdocs/2004/agendas/council/cc040622/cms4rpt/cl001.pdf

## COMMENTS

Many tenants in Toronto pay rent which includes the provision of electricity service. In such buildings, landlords purchase electricity for the building and then provide it to their tenants as a service included in their rent. Some landlords use suite metering (also referred to as sub-metering or smart metering) of rental units, which removes electricity as a service included in the rent and transfers the responsibility for payment of electricity costs from the landlord to the tenant.

Suite metering refers to an approach that permits a determination of the amount of electricity used in each rental unit. The landlord contracts with a suite 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 hydro bill. The landlord is the direct customer of the local utility, not the tenant. Instead, the tenants are clients of the suite metering company hired by the landlord.

The majority of suite meters can determine the amount of electricity used by the time of the day it is used. With "time of use" billing, suite metering enables clients to influence their costs by using electricity at different times. For example, during peak times, rates might be in the range of 15 cents per kwh and during non-peak times in the range of 7 cents per kwh.

### Legislative Framework

When the Government of Ontario introduced the *Residential Tenancies Act, 2006*, it contained provisions to govern the installation of suite meters by landlords in rental units (sections 137 and 138). Under section 137, if a landlord chose to install suite meters in rental units, sitting tenants would not be able to refuse to take on the cost of electricity use directly. Tenants and tenant advocates were concerned that these sections did not provide enough tenant protection and could erode housing affordability for tenants. The provisions went unproclaimed by the Ontario government.

Although the provisions were not enacted, landlords who wanted to move forward with suite metering could either wait until unit turnover (when the cost could be added separate from rent for a new tenant) or ask their sitting tenants to take on the electricity bills directly in return for a reduction in rent. A joint agreement between landlords and sitting tenants to decrease a service and reduce rent was allowed under section 125 of the *RTA*.

In response to regulatory uncertainty about suite metering in the RTA, the Ontario government introduced Bill 235, the *Energy Consumer Protection Act* in 2009. Bill 235

set out the government's framework for suite metering in residential rental properties (including but not limited to condominiums and multi-unit apartment buildings) and repealed and replaced unproclaimed *RTA* sections 137 and 138.

Under the legislation, landlords are required to obtain informed and written consent from existing tenants in order to remove electricity as a service included in the rent and transfer the responsibility for electricity costs from the landlord to the tenant.

When seeking consent, landlords are required to provide:

- the amount of rent reduction and how it is calculated;
- the contact information for the suite meter provider and the Ontario Energy Board;
- the suite meter provider's fees and charges including any planned increases;
- the suite meter provider's security deposit policy if tenants are required to pay a security deposit;
- the disconnection policy if electricity costs payable by the tenants are overdue; and
- the energy efficiency of the refrigerator, if supplied by the landlords, to help tenants estimate their future energy costs.

In private market rental units, landlords are required to reduce the rent by an amount that reflects electricity costs the tenant will have to pay. They must also meet prescribed energy efficiency standards for refrigerators.

Tenants are able to apply to the Landlord and Tenant Board for remedies if the landlord has breached their obligations around consent, rent reductions, energy standards, or disclosure of information.

The transfer the cost of electricity usage from landlord to tenant can also occur upon re-rental of a unit to a new tenant.

**Impact on Tenants and Housing Affordability**

Almost one-half of Toronto residents rent their homes. Over the past decade, rental housing has become increasingly unaffordable for a growing number of Torontonians, particularly those living on a low income. Paying 30 percent or more of one's income on rent or shelter costs is widely used as a measure of housing unaffordability. In Toronto, 43.5 percent of all renter households spend 30 percent or more of their pre-tax income on rent.



While many tenants in Toronto pay rent which includes the provision of electricity service, some landlords moving toward suite metering of private market rental units. There is a lack of data on the number of rental housing units that are individually metered. However, it is estimated that 75-85% of Ontario's high-rise rental housing stock is "bulk-metered", where electricity is included in rent.

A main concern about suite metering is its impact on rental housing affordability. When tenants pay for electricity outside of their rent, it can result in higher housing costs and increased uncertainty for tenants. Tenants may face additional and unexpected administrative charges including service fees, late fees and cancellation fees (adding to their bills).

Suite metering also removes a protection that exists for tenants who have utilities included in their rent. Under the *RTA*, the landlord is not permitted to cut off the hydro when utilities are included in the rent. Under suite metering, the suite metering company can shut off the hydro of tenants when they are in arrears. This may increase the likelihood of tenant households living in inadequate housing conditions or resorting to unsafe heating practices.

While suite metering may encourage some tenants to increase their energy efficiency to reduce costs or shift electricity use to off-peak hours, low-income households often have the least capacity to shift energy use (e.g. families with children, seniors, disabled and unemployed people). The negative financial impacts of suite metering may disproportionately impact low-income and vulnerable households, including those who must access peak-priced utilities for health reasons (e.g. those needing hydro for medical equipment). This may worsen their financial situation and put them at greater risk of homelessness.

**Measures to Enhance Tenant Protection**

Tenants and tenant advocates have expressed concern that provincial legislation does not provide clear enough guidelines for the implementation of suite metering. The issue of how tenants are impacted by suite metering regulations is worth further exploration by the provincial government, in order to ensure that adequate tenant protection and suite-meter service regulation and oversight are in place.

There are issues about the processes used for obtaining consent from tenants and the lack of information available for tenants to fully understand and exercise their rights about whether to consent to suite metering in their unit. In a city like Toronto, with an extremely low vacancy rate and competitive housing market, tenants may be put in situations where they agree to a landlord's terms and conditions about potential future implementation of suite metering - often without detailed information or an understanding of the potential impacts - in order to secure housing. Tenants who sign such a term at the outset of their tenancy are locked into agreements about future costs of their rents and services and may not be entitled to the reduction in rent that landlords are required to provide to sitting tenants who take on the electricity bills once a suite meter is installed.

The City of Toronto has a limited scope over the issue of suite metering. The City provides a small number of financial support programs for energy costs, including the Emergency Energy Fund for low-income tenant households and the Home Energy Loan Program for homeowners. See Attachment A for a list of programs that provide emergency energy assistance for low-income households in Toronto.

Community stakeholders such as the Advocacy Centre for Tenants Ontario (ACTO) assist tenants facing suite metering issues. Recently ACTO reports seeing a number of cases where a tenant, in possession of the unit at the time a suite meter was installed, had a pre-existing clause in their lease but does not agree to sign on with the suite meter billing company. In ACTO's view, there should be protection for tenants that would prevent landlords from seeking permission for future deals about the cost of rents and services about which the tenants had no information at the time that they entered into them. However, to date, Landlord and Tenant Board (LTB) decisions have upheld the claim that the tenant consented to suite metering if such a term was in the tenancy agreement at the time it was signed. ACTO is currently appealing this decision at the Court of Appeal for Ontario.

## CONTACT

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## ATTACHMENT

Attachment 1:  Resources and Supports

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The following is a list of programs that can provide emergency energy assistance:

Low-Income Energy Assistance Program (LEAP):
This program provides a one-time grant towards electricity or natural gas bill for low-income households who are behind on their bill and may face having service shut off. It is for emergency situations.
https://www.oeb.ca/rates-and-your-bill/help-low-income-consumers/low-income-energy-assistance-program
To apply for LEAP Emergency Financial Assistance, contact Neighbourhood Information Post, 416-924-2543.

City of Toronto Emergency Energy Fund:
This City of Toronto program helps with gas, hydro and other energy related arrears, security deposits, and reconnection costs. Eligibility is based on income and assets but recipients cannot be receiving social assistance.
https://www1.toronto.ca/wps/portal/contentonly?vgnextoid=2c1c5654ddf28510VgnVCM10000071d60f89RCRD
To apply for the Emergency Energy Fund, call 416-338-3332.

City of Toronto Home Energy Loan Program (HELP):
HELP is a financing tool offered by the City of Toronto to help improve a home's energy efficiency and save money. Low interest loans are available to homeowners for energy improvement projects on the home. The HELP pilot program is available city-wide.
https://www1.toronto.ca/wps/portal/contentonly?vgnextoid=7e00643063fe7410VgnVCM10000071d60f89RCRD
To apply for a HELP loan, contact 416-392-1826 or homeenergyloan@toronto.ca