

Confusion reigns with smart meters

Landlords, tenants still figuring out what the law really is

BY JUDYVAN RHIJN
For Law Times

With the rollout of smart meters across the province well underway, tenants and landlords are renegotiating who will shoulder electricity costs. Recent tribunal decisions and legislative changes, however, have left some tenants with four different frameworks that could apply depending on the timing of the lease changes reassigning responsibility for electricity expenses.

The smart meter is a device that records how much electricity people are using and the time of day they're consuming it. While they're now mandatory in single-family dwellings and new multi-residential developments, there has been significant uncertainty about their introduction at apartment buildings that have bulk meters or sub-meters.

Geordie Dent, executive director of the Federation of Metro Tenants' Associations, says the introduction of smart meters has been "a large headache and a debacle" for his organization. "It was pretty clear that the issue was dealt with already in the Residential Tenancies Act, but that was ignored. When the boards reaffirmed and enforced the legislation, it created these four different scenarios. Before Nov. 3, 2005, there is really no law dealing with the issue. Tenants are left in the lurch, and landlords are allowed to do anything they like."

Mary Todorow, a research and policy analyst at the Advocacy Centre for Tenants Ontario, notes that during this period energy companies were using aggressive sales tactics to persuade landlords to remove volatile electricity costs from their bottom lines. "During 2004 and 2005, there was a Wild West culture because the rules were unclear," she says. "Even after Nov. 3, 2005, when amendments were made to the Energy Conservation Responsibility Act to prohibit discretionary suite metering, the providers and landlords kept going because they thought the government was going this way."

"Thousands were installed, and all those contracts were illegal," Dent says. "This caused a lot of stress with tenants receiving threats that their electricity would be cut off."

On March 24, 2009, the Ontario Energy Board issued a compliance bulletin saying it would bring enforcement actions against those who had illegally introduced suite meters. On Aug. 13, 2009, it released an interim order making it illegal to install suite meters in multi-residential buildings. "It decided that there would be no fine or any kind of enforcement for groups operating illegally," Dent says. "But it said the contracts that tenants were

signed up to were unenforceable and unauthorized. It then set out a new framework for what landlords had to do to successfully introduce smart meters."

The board stepped in during a challenge by residents of a multi-residential development on Walmer Road in Toronto to the unilateral withdrawal of electricity-inclusive rents upon the installation of smart meters. Claire Hepburn, a staff lawyer at Downtown Legal Services at the University of Toronto, was involved in the case. "The issue really arose when one particular landlord decided, in contravention of the Residential Tenancies Act, to switch over rental units that held all-inclusive rent of \$1,000 per month for a \$20.16 rent reduction. The Landlord and Tenant Board agreed with us, and the Divisional Court agreed with us that it was illegal."

Benjamin Ries, tenant duty counsel at the advocacy centre who was also involved in the Walmer Road case, notes the situation added to the confusion prevailing among renters. "After the Ontario Energy Board issued its compliance bulletin, landlords started putting their programs in abeyance. They bumped the rent back up and treated it as inclusive again. In the case of tenants who had just moved in, the landlords were jumping rents up unilaterally, which they are not really allowed to do."

Hepburn concedes there can be environmental benefits from the installation of smart meters. "The problem is that tenants can't control their energy costs," she says. "Those buildings often have older fridges, and the energy efficiency of the units is low."

Hepburn points out that the people who consume the most electricity are the ones who are home all day: families with young children, the unemployed, the elderly, and people with disabilities.

In January, the government introduced the Energy Consumer Protection Act to replace s. 137 and 138 of the Residential Tenancies Act. "The new amendments don't speak to the specific undoing of the illegal changes from the false start made in 2008 and 2009," says Ries.

The new provisions require landlords to obtain the consent of the sitting tenant to transfer electricity costs after installing suite metering and provide information to allow an informed decision. When a new tenant is moving into an apartment with a smart meter, the landlord must provide information on

electricity consumption in the rental unit for the most recent 12-month period. Todorow is disappointed that the information required doesn't include an energy audit given that the landlord is responsible for the building's energy efficiency. She notes as well that the rules contain incentives for both sides. "There are things a landlord must do to contribute to tenants' discretionary use, such as provide an energy-efficient refrigerator. There are also things a tenant can do."

According to Dent, the result of this tumultuous history is a tremendous amount of confusion and lack of education. "I don't think we'll ever clean up the mess because in cases where there are clear violations, there are oftentimes enforcement problems. Once people have paid money to the landlord, it's hard to get it back." **LT**



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