ACTO TDCP Advocacy Centre for Tenants Ontario | Tenant Duty Counsel Program

Forcing tenants to pay for electricity (10 Walmer Rd.)

In July 2008, a landlord of a large downtown Toronto building hired Stratacon to smart sub-meter the premises. The landlord offered a one time rent reduction to the tenants and demanded that the tenants contract with Stratacon with respect to their electricity issues.

When tenants became aware of the plan, they organized. The tenant position was that having electricity included in the rent was an important part of their decision to live at 10 Walmer. They objected to the unilateral change being made to their leases, and while they supported any plan with an environmental purpose, they came to believe that it was just a "cash grab" – a scheme to have the same services under the lease provided to them but at a much greater cost.

The tenants began to receive bills, invoices and threats of disconnection if they did not start to pay Stratacon. With the help of Downtown Legal Services - affiliated with the University of Toronto Law School - the tenants filed a T2 harassment application against their landlord at the Landlord and Tenant Board requesting that the landlord stop the smart sub-metering at 10 Walmer. During the course of the matter, the Ontario Energy Board became involved in the matter more generally and set out that smart sub-metering in the residential tenancy sector was unlawful and had to stop until it became an authorized activity pursuant to the requirements of the *Electricity Act*.

The tenants won their application at the Board in July 2009 – the Board ordered that smart sub-metering stop at the complex. The landlord appealed.

At the hearing before the Divisional Court in June 2010, ACTO co-counselled with DLS. The tenants argued that the matter was moot given the decision of the Ontario Energy Board in August 2009 confirming that all smart sub-metering undertaken in residential apartment complexes was unauthorized and that it had to stop. Further, the OEB held that all contracts made pursuant to this unlawful smart sub-metering had to be unwound. At the hearing before the Divisional Court, the landlord agreed that they were bound by the OEB decision. The Divisional Court dismissed the landlord's appeal as being moot with costs. The landlord did not appeal.