Suite Metering Provisions under the Residential Tenancies Act, 2006 and the Energy Consumer Protection Act, 2009

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Submission to the Ministry of Municipal Affairs and Housing

frpo

Federation of Rental Housing Providers of Ontario

20 Upjohn Road, Suite 105 Toronto, Ontario M3B 2V9

Phone: 416-385-1100 Toll free: 1-877-688-1960 Fax: 416-385-7112 Email: info@frpo.org

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About FRPO

FRPO is the Federation of Rental-housing Providers of Ontario, and we represent landlords and property managers who provide over 250,000 rental housing suites across the province.

Background

Conservation is a key strategy to reducing energy consumption, promoting energy efficiency and curbing greenhouse gas emissions. Ontario's multi-family rental housing sector holds enormous potential for energy conservation, and rental housing providers are eager to be part of Ontario's conservation efforts.

It is very clear from data around the world that for households to conserve, they need to know their usage, and have the appropriate incentive to conserve. This is why the Ontario Ministry of Energy originally set an objective of implementing smart meters in every home and business by the year 2010. It is now clear, however, than in the rental housing sector this objective will not be met.

Ontario's rental housing sector does face a unique challenge. Most multi-unit buildings are currently 'bulk-metered', meaning that tenants are forced to subsidize their neighbour's electricity consumption, and have no knowledge of their month-to-month usage, leaving them with little ability to conserve. This is problematic for poorer households: data from numerous studies have clearly demonstrated that both energy consumption and electricity consumption are highly and positively correlated with income. This means Ontario's proposed approach of making it difficult if not impossible to convert existing tenants to individual billing will result in the continuation of a regime that requires lower income households to subsidize the energy consumption of higher income households in rental complexes.

Not all tenants face this disadvantage - in fact, over 16% of Ontario's tenants[1] have been living in sub-metered suites for decades, paying their own electricity bills and benefitting from having the ability to control their own electricity costs.

Individual Suite Metering Has Existed For Decades in Ontario and Around the World– With No Problems

[1] Ontario Ministry of Municipal Affairs and Housing, 2010. Consultation Paper: Suite Metering Provisions Under the *Residential Tenancies Act, 2006* and the *Energy Consumer Protection Act, 2009*.

The tenants living in suites that have been individually metered since the 1950's and 1960's (in some cases even earlier) have experienced no negative effects or consequences compared to other tenants. For many decades in Ontario, individually sub-metered rental housing suites have existed without issue: in multiple amendments to landlord-tenant legislation in the province, the issue of individual metering was never raised. In fact, individual metering is standard practice all around the world, without the excessive and burdensome regulation currently being proposed by the provincial government.

For many years in Ontario, tenants have enjoyed the benefit of being able to monitor and control their own energy usage without issue. Before developing any further legislation or regulations, the government should seriously question any claims now being put forth by anti-conservation activists that tenants, all of a sudden, require additional or new protections against something that has existed problem-free in Ontario, and around the world, for many decades.

One of the most important provisions of the proposed *Energy Consumer Protection Act, 2009* (ECPA), is how it deals with suite metering by amending Section 137 (Part VIII) of the *Residential Tenancies Act, 2006*. FRPO has already commented on the legislative provisions written in the ECPA, in a submission to the government provided on February 5, 2010[2]. However, most of the detailed policies overseeing implementation of suite metering must be set out in Regulations. FRPO is restricting its comments in this submission to the key areas where Regulations will facilitate the implementation of suite meters in multi-unit rental housing:

1. Energy Efficiency Standards
2. Rent Reductions
3. Revisions to Rent Reductions
4. Disclosure to Tenants
5. Notices by Landlord
6. Authorization of Suite Meter Installation and Use of Suite Meters for Billing

Energy Efficiency Standards for Buildings

The government should refrain from imposing any new energy efficiency standards on rental housing buildings within the context of suite meter implementation. Such standards are not necessary. They do not exist in other jurisdictions, because they are unnecessary. Besides that, they are not practical in most cases. There are already

[2] "FRPO Comments on Bill 235, the Energy Consumer Protection Act, 2009", February 5, 2010.

property standards and enforcement for existing properties. Enforcement officials have the authority to place work orders on properties that have serious deficiencies in respect to energy efficiency. There is no reason that rental properties should be singled out for additional regulation on top of the already excessive and burdensome regulatory system the industry faces in Ontario. Tenants have every opportunity to use their clout in the marketplace currently to express their desires for energy efficient rental suites, and regularly do so. The philosophy of provincial regulators seems to be that tenants are completely helpless, and therefore a regulation is needed for every single aspect of renting in Ontario.

Of particular concern is the notion that new rental building energy efficiency standards might be applied. It is simply not possible or practical to force landlords to make changes to the building structure, envelope or infrastructure in order to facilitate the transition to suite meters. The key reasons for this include:

- New requirements or standards for building envelopes and infrastructure would be cost-prohibitive, and have a significant impact on affordability for tenants. The resulting capital costs would not be recoverable by owners.
- The vast majority of multi-unit buildings in Ontario(91%) are gas or oil heated[3], with the structure or efficiency of the building envelope having no impact on electricity costs.
- Most energy usage within a rental unit (up to 80% of peak demand) is determined by the behaviour of the tenant[3].
- It would be impossible for the Landlord Tenant Board to verify if building structure and envelope efficiency for existing buildings would meet any new standard. There is no established standard or benchmark for apartment building energy efficiency. LEED certification has only been developed for new buildings, and it is a high standard that will not be practical to force on all existing residential properties.

Exempt existing suite-metered buildings from new standards

Imposing new standards on buildings and rental suites that have been individually metered for decades would do little more than provide an unwarranted windfall for tenants currently living in those buildings. Since there will be no changes to billing practices, rents, or costs for these tenants, it would be grossly unfair to impose a new capital cost on those landlords.

[3] Enerlife 2006. Realizing the Electricity Conservation Potential in Ontario's Private Rental Housing Sector With Particular Attention to Low-Income Households. Report to the Ontario Power Authority, April 2006.

Efficient refrigerators for newly individually-billed tenants

With respect to appliances, as has been indicated, FRPO does not think that new energy standards are necessary. Incoming tenants are perfectly capable of negotiating with owners and managers about what they want or expect in their rental unit.

If, in spite of FRPO's position above, a standard for fridges is to be implemented, any requirement for something newer than a 1993 fridge would be wasteful – fridges built after this date were considerably more energy efficient. A requirement to replace post-1993 fridges would actually be bad for the environment – forcing the swapping of fridges with all the associated greenhouse gas production in building a new fridge, shipping it, decommissioning the old fridge, etc. The energy savings would not be enough to offset all the green house gas production from the swap. Similarly, replacing stoves is not recommended, as there will be little energy savings from replacing stoves, yet large green house gas production from forcing swaps.

Regarding requirements for appliances, the most practical approach, and most beneficial for tenants, would be for the regulation to specify a year as the threshold for requiring the replacement of refrigerators. It is well known, for example, that 1993 was the year refrigerators were manufactured in a manner that resulted in significant enhancements in energy efficiency. Therefore such a regulation should specify that owners are required to have in-suite appliances manufactured in 1993 or later when the obligation to supply electricity is terminated after suite meter installation.

Energy Efficient Appliances for Existing Tenants

With respect to existing tenants, any requirement for a new appliance is not necessary and in fact unfair. As the consultation paper points out, there is no change in the ongoing relationship between existing tenants and landlords, so the government should not be intervening to change the terms between the owner and the tenant. A requirement to replace the fridge will put an expense on the owner that cannot recouped, and provide a windfall to the tenant. Existing individually metered buildings should be exempt from any new efficiency requirement. Failing this, any new rules should be limited to turnover.

Electrically Heated Buildings

The consultation paper raises the prospect of not even allowing the individual metering of electrically heated buildings. This would be a very bad and anti-conservation mistake.

The presumed reason for this suggestion is the premise put forward by tenant advocates that if electrically buildings are individually metered, owners no longer have an incentive to invest in the building envelope. This premise is unsupported by any factual

information FRPO is aware of. Tenant advocates have gone even further and argued that there will be more energy consumption in this situation, because of the owner's lack of incentive to invest. Again, FRPO is not aware of any factual substantiation for such claims.

In fact, the opposite is true. Because tenant behavior is the primary driver of energy consumption, the incentives given to tenants to conserve via exposure to consumption costs is the main factor in determining consumption. Therefore, there will in fact be even higher energy conservation from moving to individual billing in electrically heated buildings. If the government truly cares about conservation and the environment, it should be looking for ways to accelerate individual billing in electrically heated rentals, not prohibiting it, or making it impractical with unreasonable rules. Readily available factual information (e.g. Statistics Canada data which FRPO has given the government) shows that tenants in individually metered buildings use considerably less electricity. If it were true that landlords no longer had an incentive to invest, and that this resulted in increased energy consumption (as suggested by tenant advocates), then Statistics Canada data would show the opposite. Public policy should not be based on suggestions or anecdotes by tenant advocates – there should be real factual information that is the basis for significant decisions.

Even though a higher portion of tenants' electricity costs will be attributable to heating in electrically heated buildings, tenants in electrically heated building face no unique disadvantage compared to tenants in gas-heated buildings. Compared to other tenants, residents in electrically heated buildings do not incur natural gas costs as part of their rent, resulting in similar overall monthly costs to all other tenants, and similar cost impacts related to the heating requirements for the building.

Recommendations:

1. No new appliances standards are necessary under this proposed legislation. However, if the government insists on instituting new regulations, then these should be limited to a requirement that in-suite appliances be manufactured in 1993 or later.
2. The government should refrain from imposing any new energy efficiency standards on rental housing buildings and units within the context of suite meter implementation. New standards for buildings or units cannot be achieved without excessively high costs for tenants and landlords.
3. Electrically heated buildings should not be subject to any additional restrictions or conditions than gas heated buildings

4. The regulations should confirm that buildings with existing individual metered suites will be grandfathered and not subject to new efficiency requirements. Since there will be no change in who pays for electricity, and no change in the costs borne by the tenant, any new standards will only impose unfair and unnecessary costs onto landlords.

Rent Reductions for Existing Tenants

HST Impact

The Ministry's consultation paper suggests that "rent reductions must reflect the costs tenants would assume once they are billed separately for electricity". This suggestion implies that landlords should unfairly absorb rent reductions for costs that they never incurred. It is especially egregious that the Ministry's Consultation Paper suggests landlords should include the impending 13% HST in rent reductions. This implies that landlords should reduce rent to reflect a tax they have never before paid, and a tax that the government has chosen to impose over the objections of the rental housing industry.

The irony of the HST proposal in the Ministry's document is that landlords are already hit very hard by the HST. The HST is going to increase industry costs in 2010-11 by about 4.8 percent. With additional inflation, the industry is going to face cost increases in 2010-11 of about 6.8 percent. At the same time, the rent increase guideline for 2011 is forecast to be 0.4%. This impact is going to be devastating for the industry.

It is adding insult to injury for the government to propose that landlords also now absorb the HST in a rent reduction. In the last Ontario budget, tenants were given financial mitigation from HST impacts in the form of cheques and income tax cuts, even though most of them do not pay for utility costs. As a result, tenants are already getting a windfall benefit from the government's handling of the HST. It is simply not fair to require that the HST also be passed on in a rent reduction.

Fees and Charges

Administration costs are a typical part of any utility billing process. Homeowners, for example, are fully expected to pay any administration costs related to electrical metering and billing. A consistent policy should be extended to the multi-residential sector. Housing providers can only be expected to offer rent rebates or reductions to utility costs that were borne prior to submeter implementation. Forcing landlords to subsidize any additional cost, especially where it is the tenant who will receive the full energy saving benefit of submetering, is inequitable and will potentially put many housing providers in a

money-losing position. Rent reductions should be restricted to including only those costs that were previously borne by the landlord, reflecting the long-established practice in Ontario for rent reductions whenever a service or facility is removed.

Calculating Rent Reductions

Given that the proposed regime in Ontario will require the tenant's consent, there no longer needs to be any rules about what the amount of the rent reduction should be. Any such rules would be redundant. All that should be required is the owner disclose to the tenant the amount of the proposed rent reduction, and perhaps what calculation was used in determining the rent reduction. It will then be up to the tenant to decide if they want to proceed with individual billing. This gives landlords flexibility to choose how much of a rent reduction they are willing to offer, and tenants are going to be given the legislative right to either accept or reject the offer.

When the government was not considering a consent scheme, FRPO had previously proposed that a uniform guideline for rent reductions be adopted as a condition for housing providers having the ability to transfer responsibility for utility costs to tenants. Under our previous proposal, rents would be reduced to reflect the average electricity costs in a rental unit of a comparable size. This is the only fair process for rent reductions, since rents in bulk-metered buildings currently include utility costs in the monthly rent calculated using an average cost based on the size of a unit. This method fairly rewarded low energy users with rent reductions larger than their new billing amount, making them winners, and also provided an incentive for high energy users to begin conserving. All the factual evidence suggests this was happening in a significant way as soon as individual billing began.

Recommendations

1. There should be no rules about what the amount of the rent reduction should be. The tenant can withhold consent if they are not satisfied with the proposed rent reduction.
2. There may be a requirement for the landlord to inform the tenant the amount of the rent reduction, and perhaps what calculation was used in determining the rent reduction
3. The harmonized sales tax, and any other fees or charges that the landlord did not previously pay, should not be factored into any rent reductions

Revisions to Rent Reductions

Given Ontario's proposed consent scheme for converting sitting tenants, there is no need for a special rent reduction revision process after proposed rent reductions are

accepted. This may have had some applicability under the old proposed scheme, where consent was not required. Since the amount of the rent reduction is a given in the consent process, there is nothing to dispute. The tenant should not be able to come back after the fact, after major capital and labour investments have been made by the owner and utility company, and challenge the proposed rent reduction. Both the owner and utility will be stuck with an unrecoverable capital investment if the tenant is entitled to challenge the rent reduction and rescind the contract. FRPO is not clear what the rationale is for a rent reduction revision process given the consent scheme.

Any other disputes by tenants regarding the process can be dealt with in the normal manner through applications to the Landlord Tenant Board, as they currently are permitted without any additional legislative changes.

Recommendations

1. There is no need for a special rent reduction revision process after proposed rent reductions are accepted with the tenant's consent
2. As there is no need for a special rent reduction revision process, there should be no regulated time period to tenants to request such reductions

Consent of Sitting Tenants

The government's decision to require consent before individual billing is a deliberate decision for a "go-slow" approach to energy conservation in the rental housing sector. This represents a clear political decision to favour tenant advocate positioning over energy conservation and climate change initiatives. What would be most efficient for the rental sector would be a systematic approach to converting all bulk-metered buildings and sitting tenants to individual billing. The energy savings in our sector would be enormous.

However, little individual billing of sitting tenants is likely to take place in Ontario given the proposed consent scheme. Given the significant number of long-term tenants in most buildings, it will be decades under Ontario's proposed system before buildings can be converted to individual billing. This is a lost opportunity for Ontario – a clear fumble of an important energy conservation policy by the government. Energy conservation initiatives are the greenest of all potential government initiatives, and it is well known among energy specialists that moving from bulk billing to individual billing in apartments was the lowest hanging public policy fruit available to the Ontario government. Ontario will continue to lag all other jurisdictions in this area because of this decision by the government.

Disclosure to Sitting Tenants

FRPO agrees that sitting tenants who would be converted from a bulk-metered situation to individual metering are entitled to proper disclosure about the transition. The landlord should provide certain information to the tenant that is limited to facts that are available to the landlord and relevant to the tenant's decision on providing consent.

The Ministry's Consultation Paper imprudently suggests disclosure from landlords include "information outlining the tenant's ability to revise agreements". In addition to the fact that there should be very few, if any, instances where a tenant should have the ability to request a change to suite metering agreements, most tenants have already been provided with information on contacting the Landlord and Tenant Board from the Landlord due to existing requirements under 11(1) of the Residential Tenancies Act, 2006. Requiring the landlord to provide additional information will prove confusing and misleading to tenants, and result in an additional administrative burden on landlords.

In this situation, since the tenant will have to consent to the submetering under the proposed rules, there is no need for excessive disclosure rules.

Recommendations

1. Prescribed information the landlord is required to provide to sitting tenants should be restricted to:
    - The date the suite metering agreement takes effect;
    - The amount of rent reduction; and
    - Information on the year of manufacture of the fridge within the unit.

Disclosure to Prospective Tenants

Under the revised sections of the *Residential Tenancies Act* and the *Energy Consumer Protection Act*, prospective tenants choosing to move into a building with individual suite metering will continue, as they always have in Ontario, of making their own decision to live in this class of property.

Existing sub-metered buildings

For many decades, tenants have benefitted from the decision to live in a rental unit with hydro billed separately without concerns being raised about disclosure. FRPO believes that tenant advocates are simply using recent legislative activity and provincial policy

movement towards individual billing to create a tempest in a teapot. Based on the long track record of satisfaction of both tenants and landlords with this historical practice, landlords of units that are already sub-metered should be exempt from any new disclosure requirement to prospective tenants.

Disclosure requirements

FRPO does not support the need for new formalized disclosure requirements. Tenants in Ontario are perfectly capable of getting the information they need about all aspects of their potential accommodation, including any questions they have about energy conservation. Each tenant is different in terms of what is a priority for them, and they can and do frequently request information to help them make a decision. Ontario is heading in the direction of bureaucracy run amok. Today it is energy consumption disclosure. With the setting of this precedent, FRPO sees this simply expanding in the future, with new disclosure requirements being added on a regular basis. These requirements will be layered on top of what is already the most burdensome regulatory system on the continent.

Recommendations

The province has told us that they intend to institute a number of disclosure requirements for prospective tenants. Given this, FRPO has the following suggestions with respect to the information that should be disclosed:

1. With respect to consumption of the suite, it should be the average monthly kWh/month consumption for a comparable sized rental unit within the building. For example, a landlord may provide a new tenant moving into a 2-bedroom unit with the average monthly kWh/month usage, based on the mean usage of all 2-bedroom units within the building, based on the most recent information available to the landlord.
2. Under no circumstances should the consumption of a specific unit be the required disclosure item: given the huge variability in consumption in identical suite types (because behavior is the key driver), the previous occupant's consumption will have no bearing on the incoming tenant's consumption. It would also constitute a violation of the previous occupant's privacy to disclose their electricity consumption.
3. The information should focus on consumption, not on price. Prices can change from year to year, so it is the average sized unit's consumption that should be disclosed.
4. Information on the year of manufacture of the fridge within the unit.
5. The contact information of the metering provider

6. Any applicable fees, policies on deposits, disconnection and reconnection.
7. Landlords should be exempted from providing information disclosure to prospective tenants in cases where the landlord has installed a suite meter in for unit but has previously not transferred the obligation to provide and pay for the electricity to the tenant.
8. Landlords of historically sub-metered rental units should be exempt from any new disclosure requirement to prospective tenants, since existing business practices between landlords of these buildings and prospective tenants have long proven satisfactory with no reported problems.
9. Any information provision requirements should be consistent with the information local distribution companies are required to provide to all other residential customers.

Notice by Landlord

It is reasonable to expect Landlords to provide adequate notice prior to interrupting electricity service in order to install and activate suite meters. Unlike the regular 24-hour notice that landlords use for entering units for maintenance, there should be no "time-of-entry" requirement in notices for suite meter installation. The Residential Tenancies Act's current time-of-entry requirement, under section 27, is imprecise and has created legal complications for landlords due to varying interpretation of what constitutes adequate time-of-entry in such a notice (eg: A precise time? A one-hour window? A five-hour window?). Due to this uncertainty, electricity service interruption notices should be limited to providing 24-hours notification in advance of the 8:00am to 8:00pm window.

A notice period prior to the termination of the landlords responsibility to supply electricity as part of rent is redundant, however, since the date this obligation ends will already be specified in the suite metering agreement.

Recommendations

1. When interrupting the electricity service to install a suite meter, landlords should be required to provide a 24-hour notice to affected tenants. Electricity service interruption notices should be limited to providing 24-hours notification in advance of the 8:00am to 8:00pm window, in addition to the reason for the interruption.

2. There should be no notice period for terminating the obligation to provide electricity service, as this date will already be specified and consented by the tenant in the suite metering agreement.

Authorization of Suite Meter Installation and Use of Suite Meters for Billing

Under the proposed legislative rules, the practical approach to implementation of suite metering is through voluntary installation in existing buildings and mandatory implementation in new residential rental buildings.

Recommendations

1. To help the government achieve its conservation objectives, there should be no exemptions to the mandatory requirement for new buildings.
2. New buildings should be defined as those where a building permit is issued at the time of enactment of the legislation.