



Federation of Metro Tenants' Associations

May 21, 2009

Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4

Board File EB-2009-0111

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli,

Attached, please find the submissions of the Federation of Metro Tenants' Associations in the above-referenced Board file.

Sincerely,

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Program Co-ordinator
Outreach and Organizing Team
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Attention: Ms. Kirsten Walli, Board Secretary

SUBMISSIONS OF THE FEDERATION OF METRO TENANTS' ASSOCIATIONS

Overview

1. The Federation of Metro Tenants' Associations (the FMTA) is a non profit incorporated organization with the sole purpose of advancing the interests of residential tenants. The Federation was founded in 1974.
2. The FMTA is a member of the Low Income Energy Network (LIEN), and the Vulnerable Energy Consumers Coalition (VECC), and we are allied with the Advocacy Centre for Tenants Ontario (ACTO). We look forward to their expert involvement in this matter. This submission is independent and will be based on our experience with tenants on the issue of discretionary sub or smart metering.
3. Since the summer of 2008, we have met with hundreds of tenants in several buildings where sub meters have been installed. We receive calls on a daily basis from tenants concerned with sub meter installation.
4. Tenants are at a severe disadvantage in any negotiation with a landlord because of unequal access to the facts about the costs of the buildings they live in. Landlords are in the business of being landlords.
5. Matters are compounded by language and other barriers that exist for many tenants. This adds doubt that some tenants would have given informed consent on a matter that affects their rights.
6. Almost all of the buildings where we met tenants were managed by Briar Lane Management, and to our knowledge all of the sub meters were installed by Stratacon.
7. The installation of these meters and the actions of the two named companies has caused great and unnecessary stress on tenants.

8. We are opposed to any authorization or licence given to either of these two companies (or any affiliated companies or ownership) unless strict and enforceable and tough conditions are attached.
9. Notwithstanding some statements by the installing company, and statements made by spokespeople for landlord organizations, it is our view that tenants were badly treated in the process.
10. At first, we saw this as a simple matter and that tenants merely had to say no to any change in their tenancy agreement that would require them to pay for hydro to a third party. For convenience to tenants, we drafted simple letters of refusal for both the landlord and the third party installer. A tenancy agreement can not be changed without consent.
11. Regardless, tenants who explicitly refused the offer of the unlicensed companies, were billed for hydro services by Stratacon. These bills included a security deposit and a set up fee.
12. There are tenants who accepted the offer believing the corresponding rent reduction would be fair, who later discovered that the new cost of hydro added to their rent meant an increase in their overall housing cost.
13. There are other tenants who signed agreements for the third party in the belief that they had no choice. Given the power imbalance between landlords and tenants and the unequal knowledge of the relevant facts, it is inappropriate to allow these agreements to stand, particularly in light of the finding of this Board that the sub metering was unlicensed.
14. Additionally, there are undoubtedly tenants who have moved into buildings after the installation of these meters who had no choice (or usage information) but to pay hydro to the third party.
15. We also recognize that for some tenants, the offer turned out to be relatively fair. Many tenants do not spend much time at home and do not need special appliances.
16. For many tenants, certainty in budgeting is absolutely necessary. Utilities included in the rent achieves more certainty.
17. Another major concern of tenants is that they cannot see the meters and check their usage. Not all tenants have access to the internet. We have heard many concerns about their installation. In one building, a qualified electrician has advised the tenants that the meters were not properly installed.
18. After hearing about people being billed and seeing examples of the bills themselves, the FMTA contacted the Consumer Protection Office. We learned about section 13 (2) of the Consumer Protection Act. We asked that office to take action to stop the practice of billing people that Stratacon had no contract with. In our opinion, it was clearly an unsolicited bill.
19. To our surprise, the Consumer Protection Office told us that all of this was the purview of the Ontario Energy Board.

20. In the latter part of 2008, we brought our concerns to the attention of the Ontario Energy Board and asked them to take action.
21. We were surprised to learn that Stratacon was not licenced and later learned of section 53.18 of the Electricity Act.
22. We did know that Briar Lane had hired an experienced lawyer to advocate against applications that had been brought by tenants to the Landlord Tenant Board. Given their legal representation and the size of the corporations involved, it is unconscionable for them to be carrying on this activity.
23. Citizens of Ontario know that if they are caught doing something against the law, that they can not profit from it and that they must pay a penalty. We expect nothing less for corporations.
24. The actions of Briar Lane and Stratacon have been plainly described as “jumping the gun”. We believe that part of this was to force a better deal for them than that incorporated in section 137 and 138 of the Residential Tenancies Act. They have engaged in a game of chicken with the Ontario Government. This Board should not blink and should sanction their pre-mature and unlawful activity with the strongest conditions possible on any further action.

Conditions

25. As the Ontario Energy Board found it necessary to issue a “cease and desist” order on March 24 based on the law of Ontario, it is clear that any tenant who received a bill based on discretionary metering was being asked to pay for unlawful activity. Therefore, any monies received should be returned to all tenants who continue to reside in affected buildings, or to former tenants who contact Stratacon within ninety days of this condition being imposed.
26. All Accounts Receivable from tenants should be nullified.
27. The Smart Meter Company will be free to collect compensation from the landlords who allowed the unlicensed activity on the premises. We note that since it is not unlawful to reduce rents in Ontario, that the landlord may not increase the rent to former levels, except as allowed under the Residential Tenancies Act.
28. That no current tenant should ever be billed by a third party for a utility unless they have given their explicit and informed consent. Such consent should be capable of being withdrawn, in writing, for any reason within 120 days of giving consent. Should sections 137 and 138 of the Residential Tenancies Act be proclaimed, those sections may take priority.
29. Tenants who received bills from Stratacon were demanded to pay a security deposit of \$100, a set up fee, and interest and late payment fees. Tenants have established themselves contractually with the landlord and have usually given a deposit for the last months rent. We therefore would ban such deposits for sitting tenants, and would recognize it as a barrier for low income tenants. Any one contracting with a third party must be informed of interest and late payment fees.

30. The Companies that we have named and their Chief Executive Officers should pay a fine before being allowed to conduct further discretionary metering business in rental housing.
31. Extra fees for administrative costs must be reviewed to ensure that the distributor is only recovering reasonable costs.
32. To address concerns about the proper installation of sub meters during the last year, that the installing company be required to have all installations checked by an independent, licenced and qualified electrician, and a report filed with this Board.

New Objectionable Activity

33. In compliance with the Procedural Order of this Board, Briar Lane management circulated the notice as ordered. However, they also circulated a cover letter which was highly selective in its' message. In short, the letter gives the impression that the purpose of this hearing is based on some tenants being in favour of the practice of converting their tenancy to pay a third party for hydro. As the hundreds of tenants that we have met with are adamantly opposed to the practice (even if it were lawful), we find this letter to be misleading. It adds to our concern about the ongoing business activities of this company and its' alliance with Stratacon.

Written Versus Oral Hearing

34. We have read the submission of our friends at ACTO. Although we do not share their enthusiasm for the process at the Ministry of Housing on this matter, we concur with all of their points raised.
35. As we do not have the resources to participate fully in an oral hearing, we will continue to rely primarily on our written submission, as well as the participation of organizations such as VECC, LIEN and ACTO.
36. Should an oral hearing be convened, we would ask the Board to set aside a special time or times for tenants and tenant organizations to participate. We have had experience with the Ontario Municipal Board. That Board has frequently set aside a special evening session, so that tenants can come and speak to the Board (under oath and subject to cross examination) and have their views heard.

Licencing in General

37. We believe that any business that provides essential services to the public should be licenced. Therefore, no sub metering for purposes of electricity should be done without a licence. We note, peripherally, that Ontario landlords operate without licencing and that leaves consumers vulnerable. We have called on the City of Toronto and the Province of Ontario to licence landlords. The activity contrary to section 53.18 of the Electricity Act is further evidence of the need for licencing.

38. We note that there are a number of companies that are licenced for sub metering purposes for non rental housing. The actions of one company in “jumping the gun” for rental housing should be of concern to their competitors. Stratacon should not be rewarded.

General Comments on Energy Conservation

39. The FMTA supports all reasonable measures to reduce electricity use. Every one in Ontario can conserve more. Tenants are no exception.
40. Underlying the move to sub metering is the suggestion that this is the way to conserve. In fact, it can be helpful, but there is so much more that can be done. Energy audits and replacement of wasteful fridges and stoves with energy efficient appliances should be done first.
41. Education of all households yields positive results. We are part of that and are anxious to do more.
42. Landlords and sub meter companies have attempted to wrap themselves in the environment to sell their plan. No one should be fooled. Landlords want to reduce their costs. Sub meter companies want to sell more of their product.
43. Smart meters can be helpful without converting to “user pay”. A better idea would have been to install sub meters and offer tenants an incentive to reduce costs. This incentive could be a “split the savings” rewards program.
44. Many tenants now cannot live without an air conditioner in the summer time. Other tenants need other appliances for health reasons. These are legal usages in any one's home. Landlords seek to punish these people as they can be the higher end electricity users. This is blatantly unfair and they are seeking to undo negotiated terms of a tenancy agreement that include utilities.
45. Many tenants have told us that they find it necessary to use space heaters because landlords fail to provide adequate heat. This adds to electricity cost.
46. Time of Use and other matters can be punitive to young families and low income people. These people can't afford to eat out. Their children go to school during regular school hours, and need their meals at conventional times. They want to watch television or use the computer (if they have one) during early evening hours.
47. Some will tell you that there are virtuous tenants who don't use much electricity and these people are rewarded by a switch to self pay. However, this argument is disingenuous. For example, single men with full time jobs, the ability to travel, and to pay for restaurant meals on a regular basis will use less electricity. These are not the people that need a break in today's world. Our idea of a rewards program would encourage conservation for all.
48. The other thing you may hear is that tenants are wasteful. This argument was scandalously advanced in the debates and discussions on the Residential Tenancies Act. We all make

mistakes, but we respectfully submit that people do not deliberately leave lights on or appliances on to hurt their landlord.

49. Stoves use the most energy and refrigerators are also big users. They are usually owned by the landlord. The landlord has all the control in terms of capital spending on energy efficiency.
50. In the absence of section 137 and 138 of the Residential Tenancies Act, there is no apparent law to ensure that landlords will make apartments energy efficient.
51. This issue is compounded if there is electric heating.
52. The proposed Harmonized Sales Tax will likely add to the cost of energy. This must be taken into account in any deliberations.

To conclude, we are here because of the unfair practices of certain landlords and a certain sub meter provider. If tenants had been offered an informed choice, and if they had the opportunity to say no, and having said no for that answer to be accepted, this hearing might not be necessary.

It is imperative, that the people of Ontario who happen to rent their home be protected from unfair practices. It is imperative that people who have violated the law of Ontario be punished, not rewarded. This is an issue that has affected thousands of tenants already, and can affect many thousands more.

We ask this Board to use all your delegated power to protect vulnerable energy consumers.

All of which is respectfully submitted.

The Federation of Metro Tenants' Associations