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September 18, 2009

**Delivered and Via Email**

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4

Dear Ms Walli:

**Re: Authorization of Discretionary Metering Activities**
**Motion to Review Decision and Order EB-2009-0111, dated August 13, 2009**
**Board File No: EB-2009-0329**

We are counsel to the Federation of Rental-Housing Providers of Ontario ("FRPO"). This letter constitutes FRPO's motion requesting that the Ontario Energy Board ("OEB" or the "Board") review aspects of its Decision and Order dated August 13, 2009 in proceeding EB-2009-0111 (the "Decision"). This letter is filed in accordance with the Board's *Rules of Practice and Procedure* and the Board's letter dated September 9, 2009 granting FRPO an extension to file additional materials by September 18, 2009.

**Background**

This letter is further to FRPO's letter dated September 1, 2009 advising the Board that it will be seeking a review of that part of the Decision which describes a smart sub-metering provider ("SSM Provider") as "agent or sub-contractor of the landlord".

FRPO was a party to the proceeding which resulted in the Decision. FRPO made a submission dated May 26, 2009 to the Board.

While FRPO has a number of concerns about the Decision and Order, it recognizes that the Decision is interim. Accordingly, FRPO has not appealed the Decision and has limited its review request to one issue.

**Relief Sought**

FRPO by this letter asks the Board to determine that:

1. the threshold to undertake a review has been met; and

2. a decision and order confirming that:

(a) the proceeding (EB-2009-0111) did not receive factual evidence about the legal relationship between landlords and SSM Providers;

(b) such factual evidence was not requested in Procedural Order #1 ("PO #1"), nor was evidence of this nature necessary for the purposes of the Board granting authorization to exempt distributors to undertake discretionary metering;

(c) the Decision was in no way an attempt by the Board to make any finding of fact or law as to the nature of the legal relationship between landlords and SSM Providers;

(d) the Decision was not and is not intended by the Board to be any precedent or value to the LTB under the RTA for the purposes of determining whether electricity charges issued by an SSM Provider to a tenant were issued as an agent of the landlord; and

(e) the Board specifically confirms that it in no way made any finding relevant to any issue under the RTA as to whether or not electricity charges rendered by an SSM Provider meet the definition of "Rent" under the RTA.

**The Decision**

At page 10 of the Decision, the Board wrote:

> *… The smart sub-metering provider as agent or subcontractor of the landlord, has no, and legally can have no, genuinely independent relationship with the tenant with respect to the distribution of electricity within the building, whether related to smart sub-meters or otherwise.* (emphasis added)

The Board also wrote at page 18:

> *The Board appreciates that this approach may create a need for adjustments to be made to the arrangements to date by landlords and smart sub-metering companies in relation to tenants. Whatever unwinding of these arrangements may be necessary needs to be undertaken pursuant to structures and processes in place to resolve and adjudicate such matters….*

**Submissions Made to the Board Prior to its Decision**

Board Staff, in its Submission dated May 12, 2009, at page 6, made a sweeping generalization that a "licensed smart sub-metering provider essentially acts as an agent." This submission was made without the benefit of any oral or written evidence or documentation substantiating such a conclusion. It is, therefore, unsupported by any evidence and is not the result of any legal analysis of relevant facts.

Indeed, a review of the submissions made to the Board from the various organizations representing stakeholders shows that they do not contain any factual basis or evidence which supports a conclusion that an agency relationship exists between SSM Providers and landlords.

This should not be surprising, as the Board did not ask for submissions or evidence about the relationship between SSM Providers and landlords in its Notice of Written Hearing and PO #1. None of the issues which the Board identified at page 3 of PO #1 contemplate or necessarily require a consideration of the legal relationship between landlords and SSM Providers. To the contrary, the Board's description of one group of stakeholders which might be affected by the Decision suggests that the relationship between SSM Providers and landlords is other than an agency relationship.

Specifically, PO #1 states, at page 3:

> *The Board's determination in this proceeding may have an effect on:*
>
> - *licensed smart sub-metering providers who have contracted with an Exempt Distributor [i.e. landlord] for the commercial provision of smart sub-metering systems and associated services;* (emphasis added)

The above description is consistent with a commercial relationship between independent parties, not that of an agency/principal relationship.

**The Board's Review Powers**

Part VII of the Board's *Rules of Practice and Procedure* deals with requests and motions for review. Rule 44.01(a) requires a party to set out the grounds for the motion for review that raises a question as to the correctness of the Order or Decision. Such grounds may include:

(i) error in fact;

(ii) change in circumstances;

(iii) new facts that have arisen; and

(iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time.

FRPO submits that this submission satisfies each of sub-clauses (i) through (iv) above. First, FRPO submits that any finding made by the Board that an agency relationship exists between SSM Providers and landlords is an error in fact and is a finding made contrary to the evidence. In the *Natural Gas Electricity Interface Review* ("NGEIR") Decision (22 May 2007) at page 18, the Board outlined the circumstances under which the Board would

review one of its decisions. One of those circumstances is finding where a finding is contrary to the evidence.

Second, as demonstrated below, by reason of the position taken by tenant advocacy groups, new facts have arisen which were not previously placed in evidence which warrant a review.

Finally, the position taken by stakeholder groups constitutes a change in circumstances which were unknown or unforeseen at the time of the Decision, which now warrant a review of the Decision. In the *Hydro One Networks and Great Lakes Power* Decision (26 November 2007) at page 9, the Board confirmed its Decision in the NGEIR proceeding and added that there may be unknown or unforeseen implications of the decision that warrant review.

**Agency Law**

The words of Lord Herschell are probably equally applicable today as they were when made nearly 100 years ago when he stated:

> *No word is more commonly and constantly abused than the word "agent". A person may be spoken of as an "agent" and no doubt in the popular sense the word may properly be said to be an "agent", although when it is attempted to suggest that he is an "agent" under such circumstances as creates the legal obligations attaching to agency, that use of the word is only misleading.*[1]

As noted by Professor Fridman in his work *Canadian Agency Law,*[2] it is irrelevant that parties may have used the term "agent" in describing their relationship. A court has to decide what the effect of what the parties have done regardless of their use of the terminology of agency.[3] Professor Fridman added:

> *To arrive at the conclusion that there was an agency involves an intricate analysis of the facts to elucidate the correct nature of the relationship between the parties.*[4]

Professor Fridman states that the legal concept of "agency" can be expressed in words which have been quoted and applied in a number of Canadian cases:

> *Agency is the relationship that exists between two persons when one, called the agent, is considered in law to represent the other, called the principal, in such a way as to be able to affect the*

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[1] *Kennedy vs. DE Trafford* [1897] A.C. 180, at 188
[2] G.H. Fridman, Q.C., *Canadian Agency Law*, Lexis Nexis Canada Inc., May 2009
[3] Ibid, p. 6
[4] Ibid, p. 6

> *principal's legal position by the making of contracts or the disposition of property.*[5]

The three essential qualities of agency are:

(i) the consent of both principal and agent;

(ii) the authority of the agent to affect the principal's legal position (e.g., by entering into a contract on the principal's behalf); and

(iii) the principal's control of the agent's actions.[6]

In the proceeding before the Board (EB-2009-0111), the Board did not request an examination of facts relevant to a determination of the nature of the relationship between SSM Providers and landlords, and no facts were provided to the Board upon which any determination could be made. There is no evidence that landlords have consented to SSM Providers acting as their agent or vice versa. There is no factual basis to conclude that SSM Providers have the ability to affect the legal position of landlords by entering into contracts on behalf of landlords. Finally, landlords do not have control of the actions of SSM Providers. SSM Providers are obliged to comply with their conditions of licence and the Smart Sub-metering Code – not the desires of any particular landlord.

In short, there is no evidence before the Board that any of the above three essential qualities of agency exist.

As noted above, the submissions from stakeholder organizations that participated in this proceeding did not provide any factual basis, nor make legal submissions upon which the Board could conclude that an agency relationship exists between landlords and any SSM Provider. Board Staff's Submission (May 12, 2009) was a sweeping unsubstantiated generalization and an example of a modern-day misuse of the term "agent". FRPO submits that Board Staff appear to have recognized this in their submission by the equivocal language used at page 6, where Board Staff state that licensed smart-metering providers "essentially" act as an agent. In law, the facts either give rise to an agency relationship or not. There is no "almost like an agent" or "essentially like an agent" concept which is recognized at law.

The arrangements between SSM Providers and landlords are numerous and vary given the business model of each SSM Provider. The SSM Providers are arm's length from landlords. The contractual relationship between them does not give the landlord control over the SSM Provider's activities in the residential complex.

To find that an agency relationship exists under the above circumstances (or to imply that such a finding was made) is a serious factual error that should be remedied by the Board given the unwelcome consequences that have arisen and will continue unless addressed.

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[5] Ibid, p. 4
[6] *Minister of Natural Revenue v. Glengarry Bingo Association* (1999), 237 N.R. 63 (Fed. CA)

**Rent Regulation**

Under subsection 2(1) of the RTA, "Rent" includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord **or the landlord's agent** for the right to occupy a rental unit and for any services and facilities…the landlord provides for the tenant…" (emphasis added)

"Services and facilities" are defined in subsection 2(1) to include utilities. Such a definition would include hydro.

Under subsection 2(1) of the RTA electricity is a "vital service". Subsection 2(1) of the RTA prohibits a landlord from withholding the supply of any vital service. If a landlord knowingly withholds the supply of a vital service by, for example, cutting off the service for non-payment, the landlord has committed an offence under subsection 233(a) of the RTA. Upon conviction, individual landlords face fines of up to $25,000 [RTA, subsection 238(1)] and corporate landlords face fines of up to $100,000 [subsection 238(2)].

Once a person becomes a tenant, increases to his or her rent are strictly controlled. Under section 119 of the RTA a tenant's rent can only be increased once a year on the anniversary of that person becoming a tenant of the unit upon written notice being given under section 116 of the RTA. The form of notice is prescribed under the RTA. Such notice must be given at least 90 days before the rent increase is to take effect.

There are two types of permitted rent increases. The first is an increase by an amount established pursuant to section 120 of the RTA. This type of increase is called a guideline increase. The amount of the guideline increase is determined by the Minister of Municipal Affairs and Housing. Under subsection 120(2) of the RTA, the guideline in any year is the percentage increase in the consumer price index for the preceding twelve month period. The guideline amount takes effect for rent increases beginning on January 1 of a year. The amount is published in *The Ontario Gazette* on August 31 of the year preceding the year to which the guideline will apply. In 2008 the guideline amount was 1.8%.

A landlord cannot increase a tenant's rent by more than the guideline amount without an order of the LTB under section 126 of the RTA. The grounds upon which an above guideline increase can be sought and awarded are limited under section 126. One ground for an above guideline increase is specified in paragraph 1 of subsection 126(1) of the RTA. That paragraph permits an increase based on "an extraordinary increase in the cost for municipal taxes and charges or utilities or both". However under the rules for determining such increases there are two limitations. First, under 29(3) of O. Reg. 516/06 made under the RTA, for the increase to be "extraordinary" it must exceed a threshold amount. Second, subsection 29(3) of O. Reg. 516/06 requires the increase to be determined by taking into account the landlord's cost changes for all utilities. This often results in increases in one utility being cancelled out by decreases in the cost of other utilities.

**Serious Unknown or Unforeseen Implications**

Should it be determined that an SSM Provider is an agent of the landlord, it becomes arguable that the amount payable to the SSM Provider meets the definition of "rent" under

the RTA, in which case the amounts payable in respect of electricity, despite conservation efforts by tenants and the landlord, become fixed and cannot be adjusted on the basis of usage other than by means of the complicated process provided for under the RTA for once-a-year rent increases. Certainly this cannot be what the Board intended in that the consequence would be that separate billing for electricity would effectively not be allowed in multi-residential rental buildings.

More specifically, If the amounts charged by the SSM Provider are "rent" (because of a legal agency relationship), there are the following serious implications for landlords:

(a) hydro service cannot be cut-off for non-payment. To do so would violate the vital services provisions of the RTA and expose a landlord to serious quasi-criminal penalties;

(b) the hydro charges cannot be increased monthly or bimonthly to reflect the tenant's actual consumption and the wise or unwise use of the resource;

(c) any such non-annual increase would be unlawful under the RTA as having been taken:

  (i) more frequently than once a year;

  (ii) without the prescribed written notice; and

  (iii) without 90 days elapsing before the increase took effect.

(d) if the hydro charge is decreased, then the lower amount sets a permanent new floor for "rent" above which subsequent hydro charges cannot be increased; and

(e) if the amount of any one increase or the cumulative amount of more than one increase exceeds the annual guideline, then the increase was unlawful.

Any one of the foregoing will expose landlords to rebate applications and tenant self help through the withholding of all or part of their rent.

After the Decision was issued, the Advocacy Centre for Tenants Ontario (ACTO) issued a tenant tip sheet in which it set out options for tenants to recover the money paid for hydro from their landlord. A copy of the tip sheet is attached as Appendix "A" to this submission.

ACTO acknowledges in the tip sheet that the recovery of monies paid likely will be a matter for the LTB.

ACTO also made available to tenants draft "form" letters they could fill out for the purposes of seeking recovery of the amounts paid either directly from the landlord or by deductions from rent. Both letters contain the following sentence:

> *You are responsible to me for these expenses as **[name of the smart metering provider you paid bills to]** was acting as your agent when sending the bills. (emphasis in the text)*

A copy of each form letter is attached as Appendices "B" and "C" to this submission.

Accordingly, already one tenant advocacy organization is using the Board's unsupported and sweeping generalization as to the relationship between sub-metering providers and landlords as a justification to demand rent rebates.

FRPO is also very concerned that the LTB will be asked to simply adopt the OEB's statement about the relationship on the basis that the OEB is the expert in energy matters. Accordingly, there is real concern that the Decision will prejudice landlords in respect of applications to the LTB.

It is important to understand the ramifications of ACTO's position, if sustained. First, for those tenants that saw their rent reduced to reflect the fact that electricity charges were being taken out of rent, ACTO is now taking the position that the cost of new lower rent must prevail and tenants are not obliged to assume any responsibility for their actual electricity usage. Because the RTA permits a change in rent only once a year, the lowered rent (with electricity charges removed) is the new rent which cannot be increased except in accordance with the RTA, and no electricity charges of any amount may be added back into "rent". In other words, tenants will, in effect, be encouraged to conserve less in that the cost for electricity charges will have been removed from rent, effectively providing electricity to such tenants for free.

Second, such unwelcome consequences may occur not only in respect of opportunistic tenants wishing to take advantage of an apparent finding by the Board which, FRPO submits, was never intended. Tenant advocacy groups, like ACTO, will undoubtedly bring applications on behalf of entire buildings with a view to locking in electricity charges, thereby prohibiting or making it extremely difficult for the conservation-minded tenant from consenting to the smart sub-metering of a unit and assuming responsibility for his or her electricity usage. In other words, it is expected that ACTO and other tenant advocacy groups will use the alleged existence of an agency relationship as a means to derail and/or delay, across the province, efforts to individually smart meter units in residential complexes. This is inconsistent with the Government of Ontario's conservation policies and inconsistent with the Board's authorization for exempt distributors to conduct discretionary metering activities.

Absent the Board issuing an amended decision or clarification confirming the relief sought by FRPO, tenants in Ontario will attempt to enshrine through the LTB a situation where they assume less responsibility for electricity charges than is currently the case where electricity charges are already embedded in rent.

**Conclusion**

FRPO respectfully requests that the Board issue a further Decision and Order which confirms that:

(a) the proceeding (EB-2009-0111) did not receive factual evidence about the legal relationship between landlords and SSM Providers;

(b) such factual evidence was not requested in PO #1, nor was evidence of this nature necessary for the purposes of the Board granting authorization to exempt distributors to undertake discretionary metering;

(c) the Decision was in no way an attempt by the Board to make any finding of fact or law as to the nature of the legal relationship between landlords and SSM Providers;

(d) the Decision was not and is not intended by the Board to be any precedent or value to the LTB under the RTA for the purposes of determining whether electricity charges issued by an SSM Provider to a tenant were issued as an agent of the landlord; and

(e) the Board specifically confirms that it in no way made any finding relevant to any issue under the RTA as to whether or not electricity charges rendered by an SSM Provider meet the definition of "Rent" under the RTA.

All of which is respectfully submitted.

Yours very truly,

AIRD & BERLIS LLP

*Original signed by,*

Robert G. Doumani

RGD/ct

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## Appendix "A"

### Has your landlord asked you to agree to take on electricity bills?

# Just say no...to smart sub-metering!!!

***Tenant Tip Sheet - August 2009 - Advocacy Centre for Tenants Ontario***

*This publication contains general information about a recent decision of the Ontario Energy Board and is intended to assist the public at large. It is not legal advice about your situation. You should consult a lawyer or legal worker for advice on your particular situation.*

**Q1:** ***My landlord has asked me to agree to take on responsibility for electricity bills in exchange for a rent reduction. Do I have to agree?***

No. On August 13, 2009, the Ontario Energy Board found that landlords who smart sub-metered residential rental units by between **November 3, 2005** and **August 13, 2009** were not authorized to do so. This means that in most cases it is not a good idea to agree.

Always try to get legal advice or information before signing *anything* your landlord gives you!

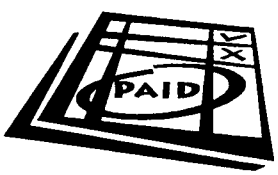
**Q2:** ***My landlord showed me a clause in my lease which says that I agreed to let the landlord put responsibility for electricity bills on me at any point in future. Does this mean I have already agreed to take on my own electricity bills?***

No. This clause is not informed consent. You still have the right to have electricity service provided to you in your rent.

**Q3:** ***Can I be evicted for refusing to take on direct responsibility for paying my electricity bills?***

No. Failure to sign an agreement with your landlord is not grounds for eviction. If your landlord threatens you with eviction or gives you an eviction notice for any reason, get legal help immediately.

**Q4:** ***I have already paid money to a third party smart sub-metering company because they were sending me electricity bills. Can I get this money back?***




Yes. It was not legal for your landlord to transfer the electricity bills to you, so you are entitled to get your money back.

**Q5:** ***Who can I get the money back from, and how?***

Your landlord is responsible to you for this refund because the smart sub-metering company was acting as your landlord's agent when they sent you bills.

Here are some options you can use to try to get your money back:

**Option 1:** Write a letter to your landlord and keep a copy asking them to return the money you paid. Attach copies of any invoices and proof of payment to this letter.

**Option 2:** Deduct the money you paid to the smart sub-metering company from an upcoming rent payment. **If you do this, it is very important to attach a letter explaining why you are paying less rent than usual.**

> **Note:** If you deduct money you believe you are owed from a rent payment, your landlord might respond by giving you an eviction notice for non-payment of rent. This notice is called a Form N4. This is a claim that you can dispute but you should get legal advice right away!

**Option 3:** File a T1 Rebate Application at the Landlord and Tenant Board (LTB) stating that your landlord's agent has collected an illegal charge from you.

> **Note:** It is likely that it will take the LTB a long time to hear your application because of the novelty of this legal issue and the various legal and legislative responses to it to date.

**Q6:** ***I have received bills from a third party smart sub-metering agent that I have not paid. Do I have to pay?***

No. These bills were not sent to you lawfully.

**Q7:** ***If I don't pay the bills, will my credit rating be affected?***

It should not be, and you can protect yourself. Contact the credit reporting agencies If you are concerned about any adverse effect on your credit rating. Also, if you never signed anything with the third party smart sub-metering agent agreeing to be billed, consider making a complaint to the Ontario Consumer Protection Branch.

**Have you talked to your neighbours about this issue? If not, why not talk to them about approaching your landlord jointly – there is strength in numbers!**

**Q8:** ***My landlord reduced my rent but then recently told me I had to go back to paying my original rent. I'm confused! What is the rent amount that I am legally obligated to pay?***

**Option 1:** You can pay the reduced rent amount. The landlord is legally allowed to reduce your rent, but is not legally allowed to increase it again by more than 1.8% for the year 2009. Most increases which are more than 1.8% in 2009 are not lawful, and not binding on you.

**Option 2:** If you went back to paying your original rent amount and now want to start paying the reduced rent amount, write a letter to your landlord informing him that you choose to pay the reduced rent because it was not lawful for them to raise it again.

> **Note:** It is possible that your landlord will respond by giving you an eviction notice for non-payment of rent. This notice is called a Form N4. This is a claim that you can dispute but you should get legal advice right away!

**Option 3:** You can also choose to continue paying the higher rent amount and then file a T1 Rebate Application at the LTB claiming that the landlord is charging you illegal rent.

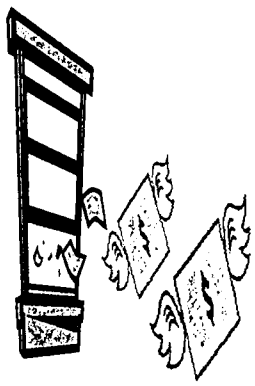
**Q9:** ***Why don't I have to agree?***

*In most cases, it is not a good idea to agree to take on your electricity bills directly.* On August 13, 2009, the Ontario Energy Board found that smart sub-metering of residential rental units by landlords between **November 3, 2005** and **August 13, 2009** was not authorized.

The Ontario Energy Board has now imposed strict conditions on smart sub-metering by landlords who want to download electricity costs onto tenants in the future. These include:

- an independent energy audit relating to your rental unit and your building
- a detailed description of how the landlord calculated your rent reduction
- your "voluntary and informed" consent in writing after reviewing the energy audit and the explanation of the rent reduction.

Even if your landlord does provide you with the above information, you can still refuse. **Why refuse**?



- The landlord is not required to do any upgrades to your unit which might help you reduce your electricity costs like putting in new windows, new balcony doors, new appliances, new insulation. In fact, these upgrades are where real energy savings are made.
- The cost of electricity will continue to rise in the years to come, while your rent reduction will always remain the same. So, even if you were to save money this year, next year will likely be a different story.
- There may be security deposits and extra charges associated with taking on responsibility for your own electricity bills which you need to consider.

**IMPORTANT NOTE:** ***This tip sheet applies to you if...***

- your lease or tenancy agreement provides that the landlord is responsible for paying for electricity service (your rent includes "hydro" or electricity service) **OR** you recently moved in and were told that your unit is smart sub-metered and that you had to pay electricity bills.

- on or after **November 3, 2005,** your landlord told you that your unit would be smart-submetered, your rent would be reduced by a certain amount and that you would become responsible for paying for electricity directly to a third party smart sub-metering provider; **OR**

- on or after **November 3, 2005,** your landlord asked you to agree to both a "rent adjustment" or "rent reduction" and a direct billing relationship with a third party smart sub-metering provider. Your landlord may have told you that such an agreement was lawful under the *Residential Tenancies Act.*

***If you are a direct customer of an electricity local distribution company (e.g. Toronto Hydro), you are not being smart sub-metered and this tip sheet does not apply to you.***

**For more legal information and help:**

Contact your local community legal clinic. You can find out the contact information for you local clinic by visiting http://www.legalaid.on.ca/en/contact.asp or calling Legal Aid Ontario at (416) 979-1446 or 1-800-668-8258

In Toronto, contact the Federation of Metro Tenants' Associations at the Tenant Hotline: (416) 921-9494, Monday - Friday 8:30 a.m. - 6 p.m. or at hotline@torontotenants.org

**To complain about your landlord's behaviour:**

Contact: Ministry of Housing Investigation and Enforcement Unit: 1-888-772-9277.
Minister of Municipal Affairs and Housing, the Hon. Jim Watson: 416-585-7000 or toll free number: 1-866-220-2290.

**To complain about getting bills that you didn't sign on for from a third party smart sub-metering company:**

Contact: Consumer Protection Branch: (416) 326-8800 or toll-free 1-800-889-9768
Ontario Energy Board: 1-877-632-2727

# Appendix "B"

**NOTE:** if you have paid money to a smart sub-metering company for electricity bills and want to ask your landlord to refund you this money, use this form letter as a template to write to your landlord asking for the money back. **It is a good idea to suggest that your landlord pay you back in stages.** For example, if you are owed $300.00, consider taking $50.00 per month off your rent for a six month period.

***Always keep a copy of any letter you send to your landlord.***

*[Your Name]*
*[Your Address]*

*[Date of Letter]*

*[Landlord's Name]*
*[Landlord's Address]*

**Without Prejudice**

Dear *[Landlord's Name]*:

**Re: Smart Sub-metering – Monies Owed to Me**

As you are by now aware, the Ontario Energy Board recently issued an order stating that your smart sub-metering of my rental unit and downloading of responsibility for payment of electricity bills to me were not authorized by law.

As a result of your unlawful attempt to make me take on the electricity bills for my unit, I have paid [**$X**] to **[name of the smart submetering provider you paid the bills to]** during the time period [list the months for which you got the bills].

I attach proof of the payments I have made [**attach copies of invoices from the smart sub-metering provider and any proof of payment you have and make a list in the letter of the months in which you got the bills and the months in which you made the payments. List any money paid for a deposit separately**].

You are responsible to me for these expenses as **[name of the smart submetering provider you paid the bills to]** was acting as your agent when sending me the bills. Accordingly, please make arrangements to pay this amount to me **in certified funds** by **[7 days from the date of the letter]**. If you do not pay me the monies owed by this time, I will avail myself of the legal options open to me to recover the monies.

This payment can be sent to me at the following address:
**[address where your landlord should send you the payment].** I look forward to receiving this payment from you at your earliest convenience.

Thank you.

Yours truly,

[your name]

# Appendix "C"

**NOTE:** if you have paid money to a smart sub-metering company for electricity bills and want to deduct this money from your rent, use this form letter as a template to write to your landlord asking for the money back. **It is a good idea to do this in stages. For example, if you are owed $300.00, consider taking $50.00 per month off your rent for a six month period.**

***Keep a copy of any letter you send to your landlord.***

*[Your Name]*
*[Your Address]*

*[Date of Letter]*

*[Landlord's Name]*
*[Landlord's Address]*

**Without Prejudice**

Dear *[Landlord's Name]*:

**Re: Smart Submetering – Rebate for Money Paid for Electricity**

As you are by now aware, the Ontario Energy Board recently issued an order stating that your smart sub-metering of my rental unit and downloading of responsibility for payment of electricity bills to me were not authorized by law.

As a result of your unlawful attempt to make me take on the electricity bills for my unit, I have paid **[$X]** to **[name of the smart sub-metering provider you paid money to]** during the time period **[list the months for which you got the bills]**.

I attach proof of the payments I have made [**attach copies of invoices from the smart sub-metering provider and any proof of payment you have and make a list in the letter of the months in which you got the bills and the months in which you made the payments. List any money paid for a deposit separately**].

You are responsible to me for these expenses as **[name of the smart sub-metering provider you paid money to]** was acting as your agent when sending me the bills. Accordingly, I am deducting **[$X]** from my rent payment for **[month in which you are taking the deduction]**.

In this regard, please find attached my rent payment for **[month]** in the amount of **[your regular rent minus the money you paid to the smart sub-metering provider]**.

Thank you.

Yours truly,

[your name]