



RENT CONTROL BULLETIN

Cohen Highley^{LLP}
L A W Y E R S

Some New Suite Metering Rules will Apply to ALL Separately Metered Tenancies

Despite some hydro suppliers' assertions to the contrary, all landlords whose tenants pay for their own electricity consumption are affected by new Suite Metering Rules under the RTA, regardless of how long separate metering has been in place and regardless of whether the units are condo or fee simple tenure. If there are "tenants" then the new rules will apply effective January 1, 2011.

Effective January 1, 2011 the amendments to the RTA will require that you provide prospective tenants with energy consumption information for the rental unit being applied for if the tenant is required to pay for en suite electricity and the unit is separately metered. The information you are required to provide is the energy consumption for the rental unit for the 12 months prior to "the date the tenancy is entered into" (which based on the industry rental application form will be the 12 month period ending when the rental application is submitted/approved by the landlord). If you provide the refrigerator for the rental unit then you also will have to provide "the date the refrigerator in the rental unit was manufactured" and "the best information available" about the refrigerator.

An obvious difficulty arises where the landlord has no control over consumption information such as where the electricity supplier and biller is a local utility. At least some local utilities are taking the position that they will not provide that information. We advised them that they are required under the *Electricity Consumer Protection Act* and the *Residential Tenancies Act* to do so. In at least one case we were advised that even if they are required, they would decline unless Privacy legislation is amended...in that respect they are also incorrect as: 1. consumption is not "personal information" and is therefore not protected; and 2. since its disclosure is required by law, they come within an exemption to the legislation. We expect they will soon be given notice by the Province of their legal obligations in this regard but bureaucratic wheels turn slowly.

In cases where the suppliers decline to provide consumption information pending being properly educated on the issue, landlords have some protection because the requirement in the legislation is that the landlord shall "...provide the most recent information available to the landlord for the prescribed period from the suite meter provider concerning electricity consumption in the rental unit". If they refuse to provide the information, you have a defence although it is open to a tenant to argue that the landlord should have exercised its rights under the Energy Consumer Protection Act and therefore the information was "available". Regardless the education issue should be resolved early on but the mechanics of ensuring the landlord gets the information in a timely manner will not.

The LTB is in the process of creating the form that you must use but as of the date of this Bulletin it is not yet available. On or after January 1 you will need to give the completed and signed form to all persons who apply to rent a unit where there is a separate meter and contract with a third party for the supply and payment of electricity. If you fail to provide the required information prior to entering into the tenancy agreement (ie: you enter into the agreement when you approve the applicant for tenancy) then the Tenant may apply to the LTB for an assortment of predictable remedies including rent reductions; abatements; and orders for work to be done ...ie: newer fridge?

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Landlords should confirm with all electricity suppliers that en-suite consumption information will be provided and put in place a protocol for obtaining such information in a timely way. Landlords will also need to put in place leasing protocols to ensure that they are able to secure consumption information and fridge data for each unit if and when notice to vacate is given and the rental unit is put on the market to be re-let.

Landlords who have contracts with sub-metering providers should ensure that such contracts are amended to reflect the mandatory requirements of the legislation referred to above and, over the longer term, should ensure that such contracts contain appropriate representations, warranties and indemnification clauses to address all issues arising as a consequence of the new Suite Metering rules.

For more information about this Bulletin, contact Joe Hoffer at hoffer@cohenhighley.com.

LAST...BUT NOT LEAST!!!

FROM ALL OF US IN THE RESIDENTIAL TENANCIES GROUP AT COHEN HIGHLEY^{LLP}, WE HOPE YOU HAVE A HAPPY HOLIDAY SEASON AND A SAFE AND PROSPEROUS 2011!



Joe Hoffer


signature electronically affixed

Laura Glithero


signature electronically affixed

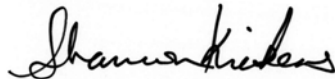
Kristin Ley



Paul Cappa



Emma Sims



Shannon Kiekens



Rachel Henderson


signature electronically affixed

Nora Taha



One London Place (Head office)
255 Queens Ave., 11th Floor
London, ON N6A 5R8
T (519) 672.9330
F (519) 672.5960

Sarnia Office
411A – 265 North Front St.
Sarnia, ON N7T 7X1
T (519) 344.2020
F (519) 672.5960

lawyers@cohenhighley.com
www.cohenhighley.com