

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 for my unit 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 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, 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.

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?

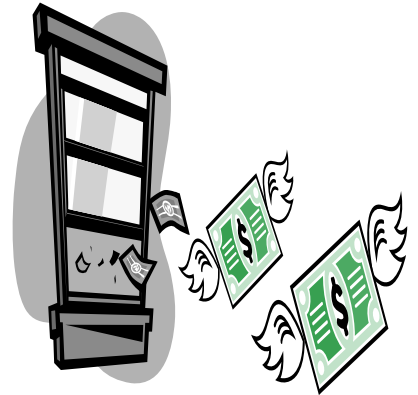
In most cases, it is not a good idea to agree to take on your electricity bills directly. On August 13, 2009, the Ontario Energy Board found that smart sub-metering of residential rental units by landlords between **November 3, 2005** and **August 13, 2009** was not authorized.

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 landlord's 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 sub-metered, 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 your 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: Ontario Consumer Protection Branch: (416) 326-8800 or toll-free 1-800-889-9768
Ontario Energy Board: 1-877-632-2727