

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

Consultation Paper

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## **INTRODUCTION**

The Ontario government has introduced legislation to strengthen protections for energy consumers and support its goal of enhancing electricity conservation and efficiency in the Province. The proposed *Energy Consumer Protection Act, 2009* provides the government with tools to facilitate the deployment of suite meters in residential rental complexes while empowering the government to develop appropriate rules and obligations to protect the interests of tenants and provide clear guidance to landlords and other stakeholders.

### **Suite metering in rental buildings**

Many tenants living in multi-unit buildings are not directly responsible for the cost of their electricity usage. In such buildings, known as bulk-metered buildings, landlords purchase electricity for the apartment building and then provide it to their tenants as a service included in their rent. Unit smart meters and unit sub-meters (collectively, known as suite meters in this paper) make it possible for individual tenants to become directly responsible for the cost of their electricity usage.

According to the 2006 Census, there are 1.3 million residential rental units in Ontario, of which it is estimated that 1.05 million units are in the private rental market and 262,000 are social housing and subsidized units. It is estimated that approximately 16% or 150,000 rental units, mainly in the private sector, are either individually metered or sub-metered, with the rest of the rental units in bulk-metered apartment buildings.

### **Suite metering provisions in the *Residential Tenancies Act, 2006***

Provisions were introduced in the *Residential Tenancies Act, 2006* (RTA) to support the government's conservation agenda, while providing protection for tenants. These provisions have remained un-proclaimed to date.

As currently drafted, section 137 of the RTA would have facilitated the implementation of smart meters in residential rental buildings. Recognizing that installation of smart meters may not be feasible in smaller rental complexes, section 138 allowed landlords of rental buildings with six or fewer units to apportion utility costs among tenants.

### **The *Energy Consumer Protection Act, 2009***

The Ontario government introduced Bill 235, *Energy Consumer Protection Act, 2009* (ECPA) on December 8, 2009 to strengthen protection for energy consumers. The Bill also aims to enable individual suite metering in apartment buildings, to give tenants more control over energy costs and allowing for greater energy conservation.

If passed, Part III of the proposed ECPA would enable the installation of suite meters in residential rental complexes and allow these meters to be used for billing tenants for their own electricity consumption. The Bill would also repeal and replace the current un-proclaimed sections 137 and 138 of the RTA with new sections that detail tenant protections and the responsibilities of both landlords and tenants with regard to electricity suite meters and apportionment of utility costs for a small building.

Part III of the proposed ECPA and related provisions in the Bill which would amend section 137 of the RTA would protect tenants and establish clear requirements for landlords by:

- Requiring landlords to seek written consent from sitting tenants before they can transfer electricity costs to them
- Requiring landlords to reduce rents according to prescribed rules, if the landlord terminates the obligation to provide electricity to tenants
- Requiring landlords to meet any prescribed energy efficiency standards, so that tenants can better manage their own energy costs
- Requiring landlords to provide information to sitting tenants before they can terminate the obligation to provide electricity costs, and to prospective tenants moving into a unit with suite metering, and
- Allowing tenants to apply to the Landlord and Tenant Board (LTB) for remedies and to resolve disputes if the landlord has breached any of their obligations around consent, rent reductions, energy standards, and disclosure of information.

In addition, landlords would not be allowed above-guideline increase claims for capital expenditures, where the capital expenditures fail to promote energy conservation and efficiency, but reasonably could have.

Proposed amendments to the *Ontario Energy Board Act, 1998* and the *Electricity Act, 1998* under Bill 235 would also protect suite metered tenants by enabling Ontario Energy Board (OEB) oversight and regulation of suite metering providers (Local Distribution Companies and unit sub-meter providers), both on the fees and security deposits they charge and their disconnection policies.

Similar protections to those outlined in the proposed amended section 137 of the RTA are provided to tenants under the proposed section 138, before the landlord can apportion utility costs.

## **We want your views**

The legislative framework for suite metering in residential rental housing is set out in the proposed RTA amendments contained in Bill 235. However, many of the implementation details would be set out in regulations. This consultation paper seeks your input on the regulations that would be developed under proposed RTA amendments and related provisions of Part III of the ECPA, if the Bill is passed by the Legislature. The paper has been organized so that each section is contained in a separate chapter. Each chapter discusses the key areas where regulations would be developed under the sections, and

includes important considerations and relevant questions that will help facilitate the installation of suite meters and ratio-billing in residential rental units.

The key areas are:

- Energy efficiency standards
- Rent reductions
- Revisions to rent reductions
- Disclosure to tenants
- Tenant's application for breach of obligations by landlord
- Notices by landlord
- Authorization of suite meter installation and use of suite meters for billing
- Treatment of social housing.

# IMPLEMENTATION OF SUITE METERS IN RENTAL BUILDINGS

## 1.0 ENERGY EFFICIENCY STANDARDS

Suite meters allow tenants to pay for their electricity based on their actual consumption, and thereby play an important role in energy conservation. However, in many apartments, tenants have limited control over energy efficiency in their apartments because the landlords own most of the major appliances and are responsible for the building envelope. If units and appliances are energy inefficient, tenants may have difficulty conserving electricity and managing costs.

Subsection 137(9) of the RTA as set out in the proposed ECPA would require that landlords must satisfy prescribed requirements related to electricity conservation and efficiency obligations for appliances and for the unit, in units where suite meters have been installed and tenants are required to pay for their electricity use. Clause 137(9)(c) would allow other energy conservation and efficiency requirements to be imposed on landlords if they install suite meters in the rental building. The prescribed standards must provide fairness for tenants, without imposing a heavy burden on landlords and discouraging them from installing suite meters in their units.

Subsection 137(10) would require landlords of rental units that are metered or suite metered to comply with the same electricity conservation and efficiency obligations in other circumstances as may be prescribed.

In addition, subsection 137(5) would provide that in cases of electrically heated buildings, landlords can terminate their obligation to provide electricity as included in rent only in specific circumstances and after they meet specific conditions.

Provisions contained in subsection 33(4) of the proposed ECPA would also enable the government to set energy conservation or efficiency standards that must be met before suite meters can be used for billing purposes.

### **STANDARDS FOR APPLIANCES**

Tenants have argued that their ability to reduce their electricity consumption is compromised if the appliances provided by the landlord are old and inefficient. Appliances typically provided in individual units by the landlord include only refrigerators and stoves. Further, research suggests that in rental situations, only refrigerators have a significant impact on electricity consumption that is beyond the tenant's control.

## **Questions for consideration**

*1. What appliance standards should be in place to support a tenant's ability to conserve electricity?*

*2. For which appliances should standards be set?*

## **STANDARDS FOR UNITS AND BUILDINGS**

Landlords are responsible for the energy efficiency of the building envelope. Heating is a major operating cost for rental buildings, especially where buildings are electrically-heated. Consequently, in electrically-heated buildings, heat would constitute a significant proportion of a suite metered tenant's electricity costs, and a tenant's costs could be significantly affected by the energy efficiency of the unit and building. It is estimated that up to 30 per cent of all rental units in Ontario are electrically heated, the remainder being gas-heated or oil-heated.

However, research suggests that it may not be possible for landlords of existing rental buildings to meet current new building standards or other standards (i.e., LEED, R-2000), without undertaking major retrofits at great expense and disruption. Meeting new building or other standards could also have a highly variable impact on a tenant's electricity costs depending on the source of heat, location, size and design of the building.

Depending on the efficiency standards developed, there could be an issue around how to ensure that these enhanced efficiency standards for units and buildings are being met. Under the proposed subsection 137(11), tenants would have the ability to apply to the LTB if they believe the landlord has breached their obligations with respect to efficiency standards required by the regulation. It may, however, be difficult for a tenant to know, or an inspector to verify, and ultimately for the LTB to decide, whether standards, if required, for components such as insulation, air leakage, etc. have been met.

One option is if an electrically-heated unit is suite metered, it may be possible, and even simpler, for landlords to not meter the electric heat. In this case, the tenant's electricity bill would exclude heating costs, and the cost for basic heat would remain as a service included in the rent. This would also avoid issues related to the fact that in electrically-heated apartment buildings, some units have significantly higher heat requirements than others due to their location within the building as opposed to tenant behaviour.

In gas-heated or oil-heated buildings, the energy efficiency of the building envelope and unit may not have a significant impact on a tenant's electricity costs. Therefore, it may not be necessary to impose building efficiency standards for these buildings. However, standards for appliances would still be effective in these buildings.

The goal is to implement simple and verifiable standards that would not have onerous cost implications, but still have a positive impact on conservation. For example, in all suite metered buildings, landlords could be required to install light fixtures that were specifically designed to accommodate energy efficient bulbs.

Alternatively, landlords could be required to obtain an independent third party energy audit of the building and its suites where suite meters are installed. An audit could help tenants make more informed choices by providing them with information about the efficiency of the suite and its appliances. If such an audit were required, the type and scope of the audit would need to be specified.

Subsection 137(10) would allow for efficiency standards requirements to be set for rental units that have already been individually metered and where tenants have been paying for their own electricity use for a number of years. Since there is no change in who pays for electricity, there may not be the same concerns with regard to the efficiency of appliances and units in these cases. As such, consideration could be given to exempt landlords of these units from the energy efficiency standards that may be required for units that will be suite metered in the future. Alternatively, consideration could also be given to provide landlords of these units with more time to comply with energy efficiency standards.

## **Questions for consideration**

- 1. What unit standards should be in place to support a tenant's ability to conserve electricity?***
- 2. How would we ensure that these standards could be achieved and managed without high costs to landlords and tenants?***
- 3. Under what circumstances and conditions should landlords of electrically heated buildings be allowed to terminate the obligation to provide electricity as a service included in rent and transfer the costs of electricity to the tenant?***
- 4. How would we ensure that rental unit energy efficiency standards could be easily verified by the LTB?***
- 5. What other conservation requirements should landlords meet if they install suite meters?***
- 6. What standards should apply to units that have already implemented meters or suite meters?***

## 2.0 RENT REDUCTIONS

Clause 137(3)(a) of the RTA as set out in the proposed ECPA would require that if a meter or suite meter is installed in a rental unit, a landlord must obtain written consent from sitting tenants before terminating the obligation to supply electricity as a service included in the rent and transferring energy costs to the tenants. In doing so, the landlords would be required to use forms approved by the LTB.

Complementing this, subsections 33(1), 33(2) and 33(6) of the ECPA would require suite meter providers to meet certain requirements before they use the meters for billing purposes. To ensure that the RTA requirements addressing the issues surrounding consent are met, suite meter providers would only be able to bill tenants when the consent and information requirements under section 137 of the RTA have been met by the landlord.

Clause 137(3)(c) would provide that if a meter or suite meter is installed, a landlord has to reduce the tenant's rent when terminating the obligation to supply electricity as a service included in the rent. These rent reductions must reflect the costs tenants would assume once they are billed separately for electricity and should account for both electricity consumption and related costs.

Generally, suite meter providers charge various fees and charges for the delivery of electricity and for the operation of individual suite meters. Local Distribution Companies (LDCs) (e.g., Toronto Hydro etc.) charge fees to customers to pay for the distribution costs of electricity. These are costs that the LDC incurs when delivering electricity to homes or businesses, and include the costs of metering infrastructure, billing and customer service. Unit sub-meter providers also charge fees to the customers they serve for the cost of meter reading, billing and collecting. These fees may also serve to recover the cost of the metering infrastructure, as with LDCs. The rent reductions would account for these fees charged by suite metering providers.

In addition, once the Harmonized Sales Tax (HST) comes into effect on July 1, 2010, tenants who pay for their own electricity use would be required to pay an additional eight per cent on their bills. The suite metering provisions of the proposed ECPA and related amendments to the RTA are expected to come into effect after the HST is in place. The HST could be another related cost that could be included in the rent reduction calculations.

However, the key issue around the rent reduction calculations centres not on what is factored into the reduction but on how to calculate the part of the rent reduction that relates to electricity consumption. Should reductions be based on the actual consumption for individual units for a certain time period, or be based on a universal formula that estimates what the reasonable consumption should be for the size or type of the unit?

## **Questions for consideration**

### ***1. How should rent reductions be calculated?***

- *Should rents be reduced by the tenant's actual electricity consumption costs, plus all applicable fees charged? If yes, for how many months should the electricity consumption costs be considered?*  
OR
- *Should rents be reduced by apportioning total building (less common areas) electricity consumption costs based on square footage, plus all applicable fees charged?*  
OR
- *Should landlords have the flexibility to choose any of the above options, but apply it to all units in the buildings?*

### ***2. Should the harmonized sales tax be factored into the rent reduction calculations?***

## **3.0 REVISIONS TO RENT REDUCTIONS**

Subsection 137(6) of the RTA as set out in the proposed ECPA would allow sitting tenants to request that their landlord adjust their rent reductions within a prescribed period of time and in prescribed circumstances. In these cases, the landlord would be required to adjust the rent and provide a rebate based on the prescribed rules. If an agreement cannot be reached and the landlord does not readjust the rent reductions and provide a rebate, the tenant would be able to make an application to the LTB.

It may be most appropriate to prescribe circumstances for these revisions if the regulations also provide that the rent reductions should be based on actual electricity consumption and where this is based on limited consumption data. In this scenario, as electricity use and costs generally vary by seasons, a tenant who has agreed to pay separately for electricity may realize after a certain time period that his or her actual electricity costs are higher than the rent reductions, if the reduction calculation was based on data from a lower consumption season.

## **Questions for consideration**

### ***1. In what circumstances should tenants be able to request revisions to their rent reductions?***

### ***2. What would be the appropriate time period within which tenants could request landlords to adjust their rent reductions and apply to the LTB?***

Tenants could be given a window of one year to work with the landlord and apply to the LTB if the landlord does not readjust the rents. After this period the rent reduction could not be varied.

## **4.0 DISCLOSURE TO TENANTS**

### **DISCLOSURE TO SITTING TENANTS**

Subsection 137(4) of the RTA as set out in the proposed ECPA would require the landlord to provide the tenant with prescribed information before obtaining the written consent of the tenant and terminating an obligation to supply electricity as a service included in the rent.

To complement this requirement, subsection 33(6) of the ECPA would require suite meter providers to provide information to consumers or other persons as may be prescribed in regulations. This provision could be used to ensure that suite meter providers provide necessary information to tenants or landlords to meet the requirements in the RTA.

### **Question for consideration**

#### ***1. What information should landlords be required to provide to tenants?***

This information could include the following:

- Date when the tenant will start paying for his/her own electricity consumption
- Amount of rent reduction, the new reduced rent that the tenant will pay, and a description of how the calculations were made (including how electricity for common areas is accounted for in the reduction)
- Information outlining the energy efficiency of appliances provided and unit
- Information about the tenant's ability to revise agreements
- The name and contact information of the suite meter provider that will generate the tenant's electricity bill
- All applicable fees that will be charged for electricity by the suite meter provider, e.g., distribution charges, administration charges, late payment charges and meter fees
- The suite meter provider's security deposit policy
- The suite meter provider's policies regarding disconnection and reconnection
- Contact information of the OEB.

### **DISCLOSURE TO PROSPECTIVE TENANTS**

Explicit written consent for payment of their own electricity use would not be required from prospective tenants of suite metered units in existing or new rental buildings. However, it is important to ensure that prospective tenants have relevant and current information before entering into a tenancy agreement that allows them to make informed choices when selecting an apartment.

If a prospective tenant of a suite metered rental unit is to be responsible for the payment for the supply of electricity, subsection 137(7) of the RTA as set out in the proposed ECPA would require that except in certain circumstances, the landlord must provide the tenant with certain information before entering into a tenancy agreement. In doing so, the landlord would be required to use forms approved by the LTB.

This information would include the most recent data on electricity consumption of the unit for a prescribed period. Consumption information must be obtained from the suite meter provider. Subsection 137(7) of the RTA as set out in the proposed ECPA would also require landlords to provide other information, as prescribed, to a prospective tenant.

Subsection 137(8) of the RTA as set out in the proposed ECPA would require the landlord to provide a prospective tenant of a metered or suite metered rental unit with the same as or a prescribed portion of the information required under subsection 137(7) in other prescribed circumstances. This provision allows for landlords of units that have already been suite metered or have been metered for several years to provide the same or part of the information as prescribed in subsection 137(7) to prospective tenants.

As mentioned previously, to complement these requirements, subsection 33(6) of the proposed ECPA would require suite meter providers to provide information to consumers or other persons as prescribed in regulations. This provision could be used to ensure that suite meter providers provide necessary information, such as unit electricity consumption information to landlords to meet their obligations under the RTA.

## **Questions for consideration**

### ***1. For what time period should electricity consumption information be provided?***

Electricity consumption information for the past twelve (12) months may be appropriate as the data would cover electricity usage during all seasons in a year.

### ***2. What other information should landlords be required to provide to prospective tenants?***

Additional information that landlords could be required to provide could include the following:

- Information of the energy efficiency of appliances and unit
- The name and contact information of the suite meter provider that will generate the tenant's electricity bill
- All applicable fees that will be charged for electricity by the suite meter provider, e.g., distribution charges, administration charges, late payment charges and meter fees
- The suite meter provider's security deposit policy
- The suite meter provider's policies regarding disconnection and reconnection
- Contact information of the OEB.

***3. Under what circumstances could landlords be exempted from providing the information to prospective tenants of a suite metered unit?***

One such circumstance could be cases where the landlord has installed a suite meter in his unit but has previously not transferred the obligation to provide and pay for the electricity to the tenant. Are there any others?

***4. Should landlords of units that have been historically directly metered or sub-metered be exempted from these requirements?***

## **5.0 TENANT'S APPLICATION FOR BREACH OF LANDLORD OBLIGATIONS**

Subsection 137(11) as set out in the proposed ECPA would allow existing and former tenants of a rental unit to apply to the LTB under certain prescribed circumstances for an order determining whether the landlord has breached any of their obligations with respect to installation of meters, consent, rent reductions, energy standards, revisions to agreements, disclosure provisions and notices.

Subsections 137(12) and 137 (13) as set out in the proposed ECPA would set out the types of orders the LTB can make if it finds the landlord has breached any of their above obligations. These orders include an abatement of rent, requiring the landlord to make specified repairs or replacements, reimbursing the tenant if they had the work done, requiring the landlord to reduce the rent by a specified amount and provide the appropriate rebate, or any other order it considers appropriate. Where the landlord fails to obtain the required consent, or in other specific circumstances, the LTB may also terminate the tenancy or require the landlord to re-assume the electricity costs and set the new rent.

### **Question for consideration**

***Under what circumstances should tenants be allowed to make an application to the LTB for an order determining whether their landlord has breached any of their obligations?***

One option could be to limit these circumstances only to those where the breaches are considered 'serious' in nature or have a significant impact on the tenant's consumption and resulting electricity costs.

In terms of energy efficiency standards, a certain time frame may have to be given to the landlords to comply with the standards before tenants can file applications with the LTB for breach of obligations. This may be particularly relevant in cases where landlords have installed meters or suite meters before the amended section 137 of the RTA comes into effect.

## **6.0 NOTICES BY LANDLORD**

Subsection 137(2) of the RTA as set out in the proposed ECPA would allow the landlord to interrupt the supply of electricity to the rental units when the suite meters are installed, if the meters are being installed by a suite meter provider. Clause 137(2)(b) as set out in the proposed ECPA would require that the electricity supply must be interrupted only for the minimum length of time required to install the suite meter. Clause 137(2)(c) as set out in the proposed ECPA would require the landlord to provide adequate notice to the tenants before the installation of the suite meters, informing them that electricity would be shut off temporarily to facilitate the suite meter installation.

Clause 137(3)(b) as set out in the proposed ECPA would require that if a meter or suite meter is installed in a rental unit, a landlord must provide sitting tenants with adequate notice before terminating the obligation to supply electricity as a service included in the rent.

### **Questions for consideration**

#### ***1. What should the notice period be for interruption in electricity service to install a suite meter?***

The notice would inform tenants that their electricity would be shut off temporarily at the time the suite meters are installed. In most circumstances, interruption in power supply is expected to be brief.

Under the RTA, a similar provision requires landlords to give 24 hours notice before they can enter the unit to undertake regular maintenance.

#### ***2. What should the notice period be for terminating the obligation to provide electricity service?***

The notice would inform tenants that electricity would no longer be part of their rent and that tenants are obligated to pay for their own electricity consumption separately. For example, a minimum of thirty (30) days notice in writing may be an appropriate notice period for terminating the landlord's obligation to provide electricity to the unit.

## **7.0 AUTHORIZATION OF SUITE METER INSTALLATION AND USE OF SUITE METERS FOR BILLING**

If passed, the proposed ECPA would enable the installation of suite metering in residential rental complexes as well as enable these meters to be used for billing.

Subsection 32(1) as set out in the proposed ECPA *permits* the installation of suite meters (voluntary) while subsection 32(2) *requires* the installation of suite meters

(mandatory). The regulations would specify the properties where installation of suite meters is voluntary and where it is mandatory and under what circumstances or conditions.

The policy intent is that the installation of suite meters would be voluntary for landlords of existing rental buildings and mandatory for developers of most newly constructed rental buildings. The government is, however, considering exemptions from the requirement to install suite meters in some new buildings.

Similarly, subsection 33(1) as set out in the proposed ECPA *permits* the use of suite meters for billing while subsection 33(2) *requires* the use of suite meters for billing. Regulations would specify in what properties, for which consumers and under what circumstances suite meters are permitted or required to be used for billing.

As mentioned above, subsections 33(1) and 33(2) of the ECPA would require suite meter providers to meet certain requirements before they can use the meters to bill occupants. To ensure that the RTA requirements addressing the issues surrounding consent are met, suite meter providers could be required to bill tenants only once the consent and information requirements under section 137 of the RTA have been met.

## **Questions for consideration**

- 1. What buildings or types of properties could be exempted from the mandatory requirement to install suite meters in (new) buildings under construction?***
- 2. How should a “new” building be defined? At what point does a building cease to be “new” and become an existing building? Should converted buildings be treated as new?***
- 3. When setting requirements for billing, what other requirements or conditions can be prescribed other than meeting the requirements under s. 137 of the RTA?***

For example, suite metering providers could be required to provide contracts or agreements to the consumer such as a customer agreement, conditions of service, etc.

## **8.0 TREATMENT OF SOCIAL HOUSING**

There are significant differences between social housing tenancies and private market tenancies. As such, the proposed suite metering provisions in the RTA need to be examined in greater detail to determine if the same rules that would apply to private rental landlords and tenants should also apply to social housing providers and tenants, or whether different rules should apply. In addition, a number of government initiatives currently underway, such as the reviews of social housing and social assistance programs, would have implications on how suite meters are implemented in this sector.

As such, pending outcomes of these reviews and separate consultations with relevant stakeholders on the potential impact of suite metering on social housing tenants, providers, and municipal service managers, social housing could be exempted from the suite metering provisions under both the ECPA and related amendments to the RTA. These would include mandatory installation of suite meters and use of the meters for billing, rent reductions and revisions. One exception may be efficiency standards for units that are currently metered or suite metered and where tenants are already paying for their own electricity.

## APPORTIONMENT OF UTILITY COSTS

### 1.0 APPORTIONMENT OF UTILITY COSTS AND RENT REDUCTIONS

Subsection 138(1) as set out in the proposed ECPA would provide for landlords of buildings with six or fewer units to ratio-bill utility costs among tenants with their written consent, based on prescribed rules. Under the RTA, utilities include electricity, heat and water. This would allow landlords to remove the provision of these utilities from the rent and apportion the fluctuating utility costs to the tenants.

If a landlord decides to apportion utility costs among tenants, the landlord would be required to reduce the tenant's rent before the tenant is charged with a portion of the utility costs. Rules for rent reductions should be consistent with formulas used to apportion utility consumption costs among the units.

#### Questions for considerations

*How should utility costs be apportioned among tenants and rent reductions be calculated?*

- *Should utility costs and rent reductions be based on the actual unit utility consumption costs plus all applicable fees charged?  
OR*
- *Should utility costs (including all applicable fees charged) be apportioned equally across all units in the building and rent be reduced accordingly?  
OR*
- *Should utility costs (including all applicable fees charged) be apportioned across units based on the square footage and rent be reduced by the apportioned utility cost?  
OR*
- *Should landlords have the flexibility to choose any of the above options?*

### 2.0 ENERGY EFFICIENCY STANDARDS

Subsection 138(5) as set out in the proposed ECPA would require that in cases where a landlord decides to apportion utility costs, the landlord must satisfy prescribed requirements concerning utility conservation and efficiency obligations for appliances and units. The prescribed requirements must be met before the landlord can charge the tenant directly for a portion of the building's utility costs. The provisions in subsection 138(5) are similar to those contained in the proposed section 137.

### **Question for consideration**

*What unit and appliance conservation and efficiency standards should be prescribed for utilities, i.e., electricity, heat and water?*

### **3.0 TENANT'S APPLICATION FOR BREACH OF EFFICIENCY STANDARDS**

Under certain prescribed circumstances, similar to section 137, subsection 138(6) as set out in the proposed ECPA would allow existing and former tenants of a rental unit to apply to the LTB for an order determining whether the landlord has breached any obligations with respect to consent, rent reductions, energy standards, information provided to prospective tenants and notices.

Subsections 138(7) and 138(8) as set out in the proposed ECPA would set out the types of orders the LTB can make if it finds the landlord has breached these obligations. The orders include an abatement of rent, requiring the landlord to make specified repairs or replacements, reimbursing tenants if they had the work done, requiring the landlord to reduce the rent by a specified amount and provide appropriate rebate, or any other order it considers appropriate. Where a landlord fails to obtain the required consent or in other specific circumstances, the LTB may also terminate the tenancy or require the landlord to re-assume the cost of the utility and set new rent.

### **Question for consideration**

*Under what circumstances should tenants be allowed to make an application to the LTB for an order determining whether their landlord has failed to meet any of their obligations?*

### **4.0 DISCLOSURE TO PROSPECTIVE TENANTS**

Subsection 138(4) of the RTA as set out in the proposed ECPA would require a landlord, who has apportioned building utility costs among the tenants, to provide a prospective tenant with the following information before entering into a tenancy agreement: the portion of utility costs applicable to that rental unit expressed as a percentage of total utility costs, the total utility costs for the building for the prescribed period and the details regarding any vacant units in that period.

The RTA would also allow for other information to be prescribed and would require landlords to provide this information to a prospective tenant.

## **Questions for consideration**

***1. Over what time period should building utility cost information be required to be provided for?***

***2. What other information should landlords be required to provide to prospective tenants?***

## **5.0 NOTICES BY LANDLORD**

Under clause 138(1)(a) of the RTA as set out in the proposed ECPA, if a landlord decides to charge a tenant a portion of the cost of the utility, he or she would need to provide adequate notice that the utility will no longer be a service that forms part of the tenant's rent and that they are required to pay for utility costs separately.

## **Questions for consideration**

***1. What should the notice period be for landlords charging tenants a portion of the cost of the utility?***

The notice would inform the tenant that utility costs would no longer be included in their rent, that they would be charged a portion of the utility costs, and that the tenant would be obligated to pay separately for these costs. For example, a minimum of 30 days notice in writing to tenants may be an appropriate period.

***2. What other additional information should be included in the notice?***

The notice could also include more information, such as the effective date of the rent reduction, the new (reduced) rent to be charged, details on how the utilities are apportioned and how the rent reduction is calculated.