

Condo Owners Sue Developer Over “Secret” Tunnel

After the discovery of a “secret” tunnel beneath a condominium building, the condo [owners are suing](#) the condominium developer, the City of Toronto, Enbridge Gas, the architect and two engineers for damages in the amount of \$3 million.

The tunnel was discovered during an investigation of foul odours permeating into the condominium. The building was a former factory that had been converted into a 41-unit residential condominium. The owners allege that the tunnel has compromised the structural integrity of the building and as a result the condominium spent about \$100,000 installing steel beams to reinforce the structure. The owners claim that they did not know about the tunnel and that it was not delineated on any of the plans, nor disclosed in the disclosure documents delivered to purchasers when they entered into their purchase agreements.

The developer’s lawyer stated that the tunnel was more like a “dug-out” space than a tunnel and that it was in place when the developer bought the property. A portion of this space was used as a conduit for utilities servicing the condominium.

If the existence of the tunnel had been disclosed in the disclosure documents, would this have been something material that would have dissuaded purchasers from buying a unit in this condominium? The disclosure of its existence would certainly help the developer in defending the lawsuit. It will be interesting to see the outcome of this lawsuit.

Currently in Ontario residential condominiums created from the conversion of existing buildings are not covered by the Ontario New Home Warranties Act, as that legislation offers protection only to owners of new units in newly-constructed buildings. However, once Bill 106, Protecting Condominium Owners Act, 2015 is proclaimed in force some statutory warranty protection will apply to residential condominium conversions.