

# TALES FROM THE TRENCHES™

## BY BARRY C. MCGUIRE

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March, 2016

### LEAD ISN'T DEAD

Recently a client called me very concerned about a notice from [Epcor](#), the company providing water and power to the City of Edmonton.

#### "IMPORTANT NOTICE re: YOUR TAP WATER SERVICE

According to EPCOR's best available records, this address may still be receiving tap water from a lead service pipe on the city property, and/or the private property."

The notice said a lot more about the history of water service piping and materials, the availability of free testing and filters, what to do when renovating, how to maintain good water quality, recommended actions from Alberta Health Services and Health Canada regarding lead levels, and other recommended actions from Alberta Health Services. The notice went to the property addressed to 'Current Resident.' The tenant sent the notice on to our client.

In her own words, here's what happened next.

*I own an older property (Built 1960) in Edmonton. In May, 2015 my tenant provided me with the attached note from Epcor.*

*I reviewed the letter from Epcor and concluded that making sure the tenants were aware of the problem was the proper thing to do (even though the notice was delivered to their doors by Epcor). I sent a copy of the notice to the tenants with a covering e-mail advising them that they should follow Epcor's instruction and make sure that they filter their water or refrain from drinking it.*

*I had just rented the lower suite of the home to a tenant who happened to be employed by Alberta Health. My main floor tenants have resided at the property for 4 years and have two very young children. The lower suite tenant was extremely upset upon receiving the notice ... and she advised me that had she known about the circumstances, she would not have moved into the suite.*

#### **Action Steps:**

*My action steps after formally notifying the tenants of the letter that came from Epcor were as follows:*

- 1. I advised both tenants that they would not be bound by the Term provisions of their Lease Agreement and that upon 30 days advance written notice to me, they could vacate the property if they felt this issue was of significant concern.*
- 2. I arranged for Epcor to test the water. I contacted Epcor's recommended contractors and met with 4 of them on site to obtain quotations to replace the water line (est. lowest cost was \$6000). I installed water filtration systems on the kitchen taps in each of the suites (cost \$700).*

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3. *I tried to track down the previous owner (I purchased the home in 1997) and reached their son in Kelowna. He said that he was confident there would be no lead pipes running to the home.*
4. *I advised Epcor that, in future, as the utilities are in my company name and I owned the property, they should be sending these notifications to my company **and** the tenant at the property. I sent them instruction to this effect in writing. Epcor advised me that they had been sending similar notices to my tenants for a number of years.*
5. *I contacted Park Insurance and asked them whether or not this matter would be covered by my insurance. Generally I was hoping to learn that they would, as a minimum, defend me in the event the tenants were to bring an action against me or my company. Park has confirmed that Insurers would defend and that they didn't think I would be liable ... given the steps I had taken. It is important to note that I believe this would be considered a 'pollution' incident and possibly uninsured by the policy.*
6. *I sent pictures of the above surface piping to Epcor to show them that what was above surface - was copper - NOT lead, and waited for the test results.*

### **Outcome:**

*After six very long weeks, I had to contact Epcor to find out whether or not the results had been determined. Epcor advised me verbally that they found that the drinking water at my property was good for consumption and that it **did not** contain lead that exceeded health guidelines.*

*I asked Epcor to send me the report in writing. Epcor e-mailed me the report, which advised that the results of their test on the tap water indicated that the lead level met Canadian Drinking Water Guidelines and no further action was required.*

*In the end, Epcor was wrong because their records were incorrect. My property did not have lead service pipes. My tenants did not move.*

### **Lessons Learned**

1. If you own older rental properties in Edmonton (or elsewhere for that matter), insert language in your lease that advises your tenant that there is the potential that fewer than 3% of Edmonton homes have services lines that are suspected to be lead... and that in the case this is one of those properties you are unaware of this and that your tenant is voluntarily accepting such a risk and that you accept no liability for any injury, death, or damages your tenants suffer as a result.
2. Check with your insurer to see if they will defend you or pay damages on your behalf in the event you become embroiled in similar circumstances.
3. Keep meticulous notes as you move through the circumstances.
4. Ensure that the water utility provider updates its records once they know your property does not have lead service pipes.

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