



Is your tree close to a neighbour's property?



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Maintenance of trees on private property can often lead to disputes between neighbours when a tree has been planted close to the property line. Usually this will be a case of a homeowner's enjoyment of their property being affected by branches or roots crossing into their lot from the neighbour's yard.

If a branch from a tree hangs over the property line in such a way that causes injury or damage to the neighbour, the owner of the tree is legally responsible for the damage or injury. The same principle also applied to damage caused by the tree roots.

A homeowner may remove the overhanging branches of a tree belonging to their neighbour. In doing so, the homeowner may not enter the neighbour's land to trim branches without permission. However, if trimming the branches contributes to the death of the tree, the owner of the tree may be entitled to bring legal action against the neighbour that caused the injury. Again the same principle applies to roots. If roots from a neighbour's tree cross property lines, the owner of the property being affected has the right to remove the roots. Only the roots that are actually crossing the property

line may be removed, and they can't be removed in such a way as may kill the tree.

If a tree falls into a neighbouring property, that property owner may be entitled to be reimbursed by the tree owner for the cost of removing the tree.

Another cause for disputes may arise when it is not clear who owns a tree, especially

if that tree requires costly maintenance or removal. Where the base of the tree lies is the determining factor of who owns the tree. A tree with a base growing on the boundary between two properties is common property between the owners of the two properties. Whoever owns the tree is responsible for maintenance of the tree. Therefore, if the tree is on the

boundary and has two owners, both neighbours must agree to the maintenance of the tree. These "boundary trees" are regulated by the Ontario Forestry Act which makes it an offence to injure or destroy a tree growing on the boundary between adjoining lands without consent of the land owner.

It is also important to keep in mind the municipal by-laws that are in place in your area with respect to trees. Residents of the City of Ottawa must abide by the Urban Tree Conservation By-law. The Urban Tree Conservation By-law (s.5) states that "No person shall injure or destroy a tree or cause the injury or destruction of a tree unless a tree permit has been issued by the General Manager to permit the injury or destruction." A tree permit will be required in all cases unless it falls into one of the exceptions. The most common exceptions include

pruning necessary to maintain the health and condition of the tree, if the tree is an immediate threat to public health and safety, and if the tree is not a distinctive tree. Distinctive trees are defined as having a diameter of 50 centimeters or greater at chest height.

Disputes over trees, branches, and roots can hopefully be avoided by good communication and cooperation between neighbours. Try discussing the problem with your neighbor before trimming yourself. If this doesn't help, try to obtain their written permission to do so before beginning.

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RENTAL GUIDE

Ontario's standard lease becomes mandatory April 30

BY DICKIE & LYMAN LLP

Who practice landlord/tenant law and other areas of law

Q: I am a small landlord in Ottawa, renting out a single-family home that I own. My lease documentation is pretty long because I make sure my tenants know how the house works; in other words, what needs to be turned on or turned off when during the year, and lots of details to keep them comfortable and avoid unnecessary service calls. I just heard that the provincial government is bringing in a mandatory standard lease. Will I have to use that

lease? Will I still be able to include all the information I do now?

A: The new standard lease will be mandatory for tenancies beginning on or after April 30, a little under three months from now. It will be applicable to all ordinary rental dwellings, but not to mobile home parks, land lease communities, care homes, social housing or member units in co-operative housing. (The new lease does apply to units in co-ops that are rented by tenants.)

The government believes the new standard lease is needed because some land-

lords use leases that include terms that run contrary to the Residential Tenancies Act (the RTA). Those terms are not enforceable (because the RTA overrides them), but they can confuse tenants, and put pressure on tenants to do things that they are not required to do.

There will be electronic versions of the new lease. The paper copy of the lease now runs to seven pages, with six pages of notes explaining the law, for a total of 13 pages. The standard lease can be viewed by Google searching "Ontario standard lease."

The new standard lease has spaces to fill in the nec-

essary information, such as the names of the landlord and the tenant(s), the address of the rental unit, contact information for the landlord (both for day-to-day communication and for emergencies), the start and end dates, and the rent.

Other sections address services and utilities, any rent discount, any deposit for keys (or remote entry devices or cards), smoking rules, tenant's insurance, rules about making changes to the rental unit, obligations about maintenance and repairs, and rules about subletting and assignment.

There is a section that

addresses additional terms, such as rules about the use of amenities, like a swimming pool. That section notes that any additional term cannot take away a right or responsibility under the RTA, and gives some examples of terms that would be unenforceable. Many of the sections refer to the notes that explain the relevant law. The notes run from A to U, and cover many legal issues that can arise in a residential tenancy.

You would be able to include your information as an extra term, or you could provide that information outside of the tenancy agree-

ment.

At least for now, it will not be an offence for a landlord to use a different lease, and the different lease will be valid with two exceptions. As is the case now, any term that conflicts with the RTA will be overridden by the RTA. In addition, if the standard lease is not used, then once in their tenancy a tenant can call on the landlord to provide a tenancy agreement in the standard form. If the landlord does not do so, or if the tenant says they do not accept that agreement, then the tenant can end the tenancy regardless of its termination date.