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City bylaw leaves permits up to homeowners

In many parts of the City of Toronto, houses were built so close together that when one owner wanted to repair or improve one side of his or her house, it was often necessary to access a neighbour's property.

That was the concern of my client Stan who asked me for advice when the house next door to his was sold and the new owners began to excavate in the narrow space between the two houses. In the process of working on their own foundation walls, they dug a huge hole from house to house. They removed the waterproofing and weeping tiles from Stan's foundation walls and ripped out the concrete walkway between the houses.

Stan was concerned that the excavation would be back-filled without repairs being made to his foundations.

I pointed out to Stan the provisions of Toronto bylaw 1154-2008, which states that an owner or occupant of land may enter adjoining land at any reasonable time for the purpose of making repairs to any building, fence or structure on his or her own land, but only to the extent necessary to carry out the repairs or alterations.

This right of entry may be exercised if the adjoining owner consents, or if the executive director of the city's Municipal Licensing and Standards department issues a permit for the entry. The entry is subject to a number of conditions, including the requirement that the permit holder shall provide compensation for any damages caused by the entry or by anything done on the land. An applicant for an entry permit has to provide liability insurance and post a security deposit with the city.

Permit fees are \$230 for low-impact work and \$840 for high-impact work, in addition to the security deposit.

Stan's neighbour had neither asked permission to dig on Stan's land nor obtained a permit from the city.

At my suggestion, Stan filed a complaint with the city building department about his neighbour's unauthorized entry.

To my surprise, the local manager of Municipal Licensing and Standards replied that the bylaw pertains to the permit process and does not apply in this instance.

If there has been a trespass, Stan was told, a complaint should be directed to Toronto Police Services.

With respect to damages as a result of the construction, Stan would have to file a claim in civil court.

Unhappy with this interpretation, I requested that the matter be escalated to the legal department of the City of Toronto. Shortly afterward I received an email reply from Christina Cameron, a lawyer with the city's legal services department.

She told me that the city bylaw was enacted under the authority of the City of Toronto Act, which permits the city to pass a bylaw to authorize a right of entry onto adjoining land for certain limited purposes.

Cameron pointed out the wording of the entry bylaw, which says that the owner or occupant of land may enter adjoining land for certain purposes with consent or with a city permit. The bylaw, she noted, does not authorize the city to prohibit entry.

Nor does it say that an owner may only enter land with permission or with a permit.

In this case, Cameron wrote, the constructing neighbour did not involve the city and did not enter your client's land under the authority of the bylaw.

As such, the city has no authority to take action and the dispute becomes a private one between the property owners.

Given this interpretation, the scope of the bylaw is restricted to cases where an owner obtains a neighbour's permission to access land, or voluntarily obtains a city permit. Unfortunately, however, there is no requirement to obtain a permit.

Anyone wishing to access a neighbour's land without permission and without a city permit is free to do so if he or she is willing to risk a court action for trespass and damages. But it does not appear to be a violation of bylaw 1154-2008 to access a neighbour's property without a city permit.

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