

Fallen Trees

By Brian Madigan

If a tree falls in the forest, no one cares, except perhaps the termites. But, if your neighbour's tree falls on your house, then there is a little problem.



First of all, is your neighbour liable? Let's say your neighbour has a 35 foot pine tree and one day it simply blows over in the wind and damages your eaves trough. Can you recover the cost? You inspect the damage and find out that the eaves trough will cost \$215.00 to repair. But, much to your surprise, it will cost over \$ 900.00 to remove the tree.

Naturally, you call your insurance broker, only to discover that you have a \$ 1,000.00 deductible. This means that your insurance company will only pay you \$115.00, if you present a claim. Why not keep and claims free record and absorb this expense?

So, what about the neighbour! In order to have a claim against the neighbour for the damage, you have to prove negligence. This means that the neighbour failed to do something that was reasonable. Was the tree old and diseased? Was it hanging precariously over your property? If this was simply a surprise to everyone, then your neighbour may not have been negligent. This was a simple accident. And in law, the courts see no particular purpose transferring the cost of the damage from one innocent party to another. OK, this means that you will have to repair the eaves trough yourself without proof of negligence.

Generally, this is the story you will hear from your own insurer and your neighbour's insurer. In fact, at times like these they often like to speak quite philosophically about religion, acts of God and forces of nature. However, the bottom line is that they don't want to provide you with compensation, just condolences.

What about the cost of removing the tree? That's almost \$1,000.00 on its own (when you include taxes). That is a completely different story.

Your neighbour is responsible in nuisance for the cost of removal of his tree from your house. It's a matter of strict liability. There's no need to prove negligence.

The simple presence of his tree constitutes a continuing nuisance and he is under a legal obligation to remove it. Fault is irrelevant. Ownership is all that matters.

You will have to demonstrate that you provided reasonable notice to your neighbour to remove the tree. You may then remove it yourself and claim the costs in Small Claims Court. Or, you could even bring an application in Superior Court seeking an Order requiring your neighbour to remove the tree. This is a much more costly approach.

In either case, your neighbour's insurer will be responsible for the claim without the imposition of a deductible. So, when you are speaking with an insurer it's always better to discuss compensation than religion.

Brian Madigan LL.B., Realtor is an author and commentator on real estate matters, Coldwell Banker Innovators Realty Inc. 905-796-8888
BRMadigan@Rogers.com or visit www.OntarioRealEstateSource.com.