

# The rights and wrongs of trespass

## Occupier of land must take action

In general terms, a trespass is an interference with land you rightfully occupy by someone without your permission.

For example, someone who comes on to your property or a branch/tree root that grows on to your property.

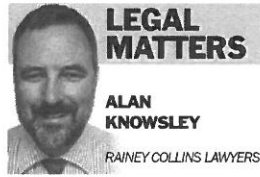
The right to take action against a trespass is with the occupier of the land, not the owner, so the tenant of a property has to take action, not the landlord.

To be a trespass the interference with your land has to continue after you revoke any permission (express or implied) to be on the land.

There is an implied permission for someone to walk up your path to your front door to knock on the door.

If you tell them to leave your property they must do so straight away, but they are not trespassing if they leave as quickly as reason-

ably possible. If they hang around or wander off around your property, they will be trespassing from that point.



**LEGAL MATTERS**

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If you have a sign on the gate –

such as “No Entry” – they cannot enter your property at all. If you have a locked gate they cannot enter because there is no implied permission to do so.

In the example of tree branches overhanging the boundary or roots growing under it, the occupier can “remedy” the trespass by cutting off the branches or roots and putting them back over the boundary.

You could also require the neighbour to carry out that work. You can seek to recover the costs of the work from them.

If the trespass is by a person, they are committing a criminal offence, as well as a civil wrong.

You can get the police involved if the trespasser will not leave or returns within two years after

being warned to stay off any place.

The police can arrest a trespasser and remove them from the land. The penalty once convicted is a fine up to \$1000 or three months’ imprisonment.

You can also physically remove a trespasser yourself, as long as you only use reasonable force to do so. Calling the police may be the wiser move.

You can take a civil claim against a trespasser for compensation for the breach of your rights as occupier and do not have to prove any damage to your land or property.

If there is damage you can also seek compensation from them for that damage. As usual, you need to prove that the damage resulted from the trespass.

**J asks about tree roots lifting a driveway and what the rule is for roots.**

As mentioned above, roots

coming across a boundary can be removed back to the boundary.

Care needs to be taken so that the tree is not destabilised. You also need to ensure that it is not a protected tree.

Because the roots are under the driveway there may not be a practical way of removing them without removing part of the driveway. Proof that the damage was root-related is needed, if removal and/or repair costs are to be recovered.

An arborist may be able to say the roots are the cause of the damage to the driveway – for example, by identifying what kind of tree the roots are from and which tree they are from.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733484. If you have an inquiry you would like discussed in this column email [aknowsley@raineycollins.co.nz](mailto:aknowsley@raineycollins.co.nz).