

STREET LAW SMARTS #17

TRESPASSING

It is an offence to trespass on public and private property in Ontario. Under the *Trespass to Property Act*, you commit trespassing when you:

- 1) go onto another person's property where it is prohibited with notice in writing (can be a sign stating 'NO ENTRY');
- 2) do something on another person's property that is prohibited. Things that are prohibited are listed on a sign; or
- 3) do not leave the property immediately after being told to do so by the owner or a person authorized by the owner.

If you can show that you thought that you had permission to be on the property, then you have a defence to a trespassing charge. It is up to you to convince the court that your belief was reasonable. Permission can be withdrawn at any time and it would be trespassing if you were asked to leave the premises and refused to do so. However, you cannot be asked to leave based on discriminatory reasons (for example, on the basis of race or religion or age).

A police officer or someone who is legally occupying the property can arrest you without a warrant while you are still on the premises if they have reason to believe that you are trespassing. Once you have left the property, a police officer can only arrest you without a warrant if he or she has reason to believe that you were trespassing and they must establish your correct name and address.

If you receive a ticket for trespassing under the *Trespass to Property Act* and cannot afford to pay the fine, then follow the direction on the back of your ticket to bring it to court and ask to have it reduced to something you can afford to pay. See **Street Law Smarts #14: Tickets**.

Cities and towns in Ontario are private property owners. They have a right to issue trespass orders under the *Trespass to Property Act (TPA)* if you illegally occupy the property. For example, Nathan Phillips Square and Metro Hall are the property of the City of Toronto, and officials can exercise their discretion in prohibiting people from being at the Square. You are protected by Ontario's Human Rights Code. It is unlawful for officials to ask you to leave due to factors such as your age, race, or sexual orientation.

Squatting

You are squatting if you live in an unoccupied building or house that you do not own, rent or otherwise have permission from the owner to use. Squatting itself is not an offence but, depending on the circumstances, you could be fined for trespassing or charged with several *Criminal Code* offences.

For example:

- trespassing at night - loitering or prowling near a dwelling house at night
- breaking and entering
- being unlawfully in a dwelling house
- mischief.

Trespassing at night - loitering or prowling near a dwelling house at night while on someone else's property is illegal and you may be criminally charged unless you can show you had a lawful excuse to be there. The trespass must happen between 9pm and 6am. Usually, near a house means on the property or lingering outside a window.

Breaking and entering occurs when you enter a place through a permanent or temporary opening and you have the intent to commit an offence (e.g. theft). Again, it is up to you to show a lawful excuse if charged. If you are found guilty of breaking and entering a dwelling house, it can be a serious offence.

If you illegally enter a dwelling house with the intent of committing an offence inside, then you are guilty of being unlawfully in a dwelling house. Again, it is up to you to show that you didn't intend to commit a crime or that you had a lawful reason to be there.

For each of these offences, the dwelling house must be "kept or occupied". You may have a defence to the charge if the dwelling house has been abandoned for a long time.

Finally, squatting may result in charges of mischief if you intentionally, and without lawful excuse, damage property, make property useless or dangerous, interfere with the lawful use of property, or interfere with anyone in their lawful use and enjoyment of property (E.g. drawing graffiti on abandoned buildings, burning another person's property or using utilities without permission).

Getting arrested?

If arrested, you should immediately ask to speak to a lawyer or duty counsel. You should not make any statement before you have had the opportunity to speak with a lawyer. Your rights when you are placed under arrest will depend on what you are being arrested for, and whether you have been arrested by the police or by a civilian.

For more information, see:

Street Law Smarts #12: Stops and searches by police

Street Law Smarts #13: Security guards.