

How to claim for garden maintenance



“ Garden maintenance is another common cause of dispute between tenant and landlord. It is often a contentious area because many tenancy agreements are not specific with regard to the landlord’s requirements and moreover some agreements do not mention the garden at all.

There are various considerations for an adjudicator to take into account, but the most fundamental of all is that there must be a clause written in the tenancy agreement stating that the tenant is obliged to maintain the garden. Without this clause the landlord will be unable to make a successful claim for garden maintenance should an issue arise.

Where a clause is included in the agreement and a claim is made, the outcome of a dispute will depend on the evidence provided and the reasonableness of the deposit amount being claimed. ”

Suzy Hershman, Head of Dispute Resolution gives her expert insight into how mydeposits approach claims for garden maintenance.

The adjudicator will ask these questions when reviewing the dispute evidence:

- Q. Whose opinion of the deterioration of the garden areas is being used to ascertain what work to the garden is necessary and are they independent and impartial?
- Q. What evidence is there to show the extent of any deterioration from the start to the end of the tenancy?
- Q. Is there a well detailed inventory, check-in and check-out report showing the exact condition of each area in dispute?
- Q. Are the reports independent and impartial? Are there accompanying dated photographs?
- Q. Has the tenant signed to agree with the content of the reports at the start and end of the tenancy?
- Q. Has the tenant made some effort to attend to the problem area?
 - This would be evident from the check-out report which is why an independent report and the tenant’s presence at check out and signature hold considerable weight.
 - Has the tenant provided any evidence of costs they have incurred in attempting to remedy the issue?
 - Has the tenant made any admission, in writing, to causing the deterioration or allowing the issue to occur?

The adjudicator will consider asking these questions when reviewing your dispute evidence *continued*:

- Q.** Was the tenant made aware of any potential costs ahead of time or would it have been appropriate for them to be given the opportunity to mitigate any potential loss? Is the amount you are claiming reasonable for what is said to be required? Remember the landlord should not end up in a better position than at the start of the tenancy so you must consider 'seasonal growth' in your claim for garden maintenance and wear and tear on things such as marks left by planters on paving. Seasonal growth becomes relevant when comparing the condition of the garden from start to finish and should consider that if the check-in was done in the winter and the check-out in the summer, the condition and acceptable speed of growth would be totally different.

An adjudicator will rely on the evidence submitted so consider the following list as useful for any claim:

Tenancy Agreement:

The agreement will define that the garden should be left, at the end of the tenancy, in the same condition as at the start; and hold the tenant liable for any deterioration in the condition. It must also set out the expectations of the tenant in relation to the maintenance of the garden which must be reasonable.

Ideally the tenancy agreement should describe the requirements for the maintenance of the borders, lawn, paved areas but accept that an area left in 'seasonal order' is fair. i.e. a tenant cannot be expected to pay for mowing the lawn in extremely wet weather just because it has not been done for 2 weeks or to prune tall trees, which would require expertise.

A good example will oblige the tenant to: 'cut the grass (if any) of the property with an appropriate garden mower as necessary from time to time to keep the grass in a neat and tidy condition. Furthermore, to keep the patio areas, paths, garden areas, lawns, flower beds, shrubs or bushes and borders as tidy, weed free and in seasonal order as at the start of the tenancy'.

The tenancy agreement may also state that the tenant cannot carry out any alterations to the garden, or remove any plants without the landlord's consent (which should be in writing).

Check-in and check-out reports:

DO NOT RELY ON BLANKET CLAUSES e.g. 'where there is no detail provided, it will be deemed to be in a good condition...'

Make sure you have both an inventory and schedule of condition at the start which details the exact condition of each area (back and/or front) as an inventory list is not sufficient. This can then be used for comparison by the clerk carrying out the final inspection and in the production of the check-out report. Where possible, use the same inventory company for both check-in and check-out reports and where possible, use an independent and impartial inventory company.

If possible have photographic images embedded in the report. This will verify the date that they were taken and will assist in demonstrating the extent of any deterioration. It is also best practice for the tenant to be present at the check-in and check-out inspections and to sign the documents there and then, agreeing to their content.

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Photographs should be:

- ✓ Ideally embedded into the check-in inventory/report and check-out report.
- ✓ Digitally dated and in colour.
- ✓ Referenced to the relevant area in the property.
- ✓ Clear and precise, of good resolution.

Estimates and invoices:

- ✓ Do you have receipts in relation to any of the areas in dispute? If you do, then provide these in evidence. These may relate to the last time any work was carried out by you, in preparation for the start of the tenancy or costs you have actually incurred to put the garden back in a good condition after the tenancy has ended. This will allow an adjudicator to accurately assess the extent of deterioration when making an appropriate award.
- ✓ Also, what is reasonable to charge the tenant? This should be proportionate to the extent of deterioration made apparent by the evidence and not include work carried out to the rest of the garden.
- ✓ Remember that invoices are of more value than estimates which will nevertheless be persuasive as costs actually incurred shows a loss already suffered BUT beware that this does not automatically transfer the full cost to the tenant in the event of a breach.

NOTE: You will not succeed in claiming for replacement costs where repair would be sufficient.

Emails and letters

Has there been correspondence between the landlord/agent and tenant in relation to the issues in dispute in which:

- ✓ The tenant has informed the landlord/agent of the damage or excessive deterioration as and when it occurred e.g. storm damage to fencing and sheds.
- ✓ The tenant makes any admission or offer of compensation for the deterioration.

Finally, what, if any, are the responses?