

REPAIR AND REMEDY CASES

Cases under this section may only be filed when there is a tenant and a landlord. The case must be filed in the Justice Court Precinct where the property is located. There is a map on the main page of Judge Hansen's website, and physical maps and physical maps located in each J.P. office.

Filed by a residential tenant to enforce a landlord's duty to repair or remedy a condition that materially affects the physical health or safety of a tenant.

Repair and remedy cases are controlled by Chapter 92, Subchapter B of the Property Code, in sections 95.051-92.061. You can access the Property Code at the LAW LIBRARY link on my webpage.

You need to have two documents (attached below) to file a repair and remedy case:

1) A Petition (Read Rule 509,2 below for instructions)

2) A Justice Court Civil Case Information Sheet

Fill out the above two documents completely, using the RULES listed below, and bring TWO copies, the original and a copy, along with your filing fees to open the case.

Judges short version of steps in a R and R case:

- 1) Plaintiff files Petition- which states a ton of info about the problem. Court costs same as SC suit.
- 2) Plaintiff can seek up to exceed \$20,000, including attorney's fees, but excluding interest and court costs.
- 3) Clerk sets HEARING DATE no earlier than 10 days or greater than 21 days after DATE PETITION FILED
- 4) Landlord is not required to file an answer but may if he wishes
- 5) The tenant must provide the court with 2 copies of the petition and any attachments to the petition for service on the landlord.
- 6) A petition substantially in the form promulgated by the Supreme Court is sufficient. A suit may not be dismissed for a defect in the petition unless the tenant is given an opportunity to correct the defect and does not promptly correct it.
- 7) Citation may be served by certified mail return receipts requested, or by Constable, Sheriff, or private process server. Read Rule 509.4 (a) and (b) (below)for details on service
- 8) Under 509.6 Judge may enter Judgment and order Landlord to
 - 1) Take reasonable action to repair or remedy. Judges order must include in reasonable detail the actions he landlord must take to repair or remedy and the date it must be completed
 - 2) Order reduction in tenants rent under Rule 509.6 B2B (below). Judges order must state the amount of reduced rent the tenant will pay, if any rent at all, the frequency of the rent, the condition justifying reduction

of rent, the effective date of the order reducing rent, that the order Of reduced rent will terminate on the date the problem is remedied AND that on date problem is remedied or repaired,
 Landlord must give tenant written notice served under Rule 501.4 (below), that the condition justifying the reduction in rent has been remedied and rent will now revert to amount specified in lease.

- 3) Award civil damages, a civil penalty
- 4) Attorney Fees EXCLUDING attorney fees for damages related to a personal injury
- 5) Landlord may be held in contempt under 21.002 Of Govt Code.

- 9) No counterclaims, joinder of suits, or third party suits under Rule 509.7 (below).
- 10) May appeal to county court by filing a written notice of appeal with our court within 21 days of date judgment signed or amended.
- 11) Posting of appeal bond not required.
- 12) Court costs are to be paid upstairs (we send papers up with notice of appeal). Trial de novo Rule 509.8(e) (below) .
- 13) If a Writ of possession has been filed or final, it trumps any order for repair and remedy.

SPECIFICS FOR PROCEEDINGS TO ENFORCE LANDLORD'S DUTY TO REPAIR OR REMEDY

RESIDENTIAL RENTAL PROPERTY (THE 509 SERIES)

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THE 509 SERIES - PROCEEDINGS TO ENFORCE LANDLORD'S DUTY TO REPAIR OR REMEDY RESIDENTIAL RENTAL PROPERTY

RULE 509.1. APPLICABILITY OF RULE

Rule 509 applies to a suit filed in a justice court by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant.

RULE 509.2. CONTENTS OF PETITION; COPIES; FORMS AND AMENDMENTS

(a) Contents of Petition. The petition must be in writing and must include the following:

- (1) the street address of the residential rental property;
 - (2) a statement indicating whether the tenant has received in writing the name and business street address of the landlord and landlord's management company;
 - (3) to the extent known and applicable, the name, business street address, and telephone number of the landlord and the landlord's management company, on-premises manager, and rent collector serving the residential rental property;
 - (4) for all notices the tenant gave to the landlord requesting that the condition be repaired or remedied:
 - (A) the date of the notice;
 - (B) the name of the person to whom the notice was given or the place where the notice was given;
 - (C) whether the tenant's lease is in writing and requires written notice;
 - (D) whether the notice was in writing or oral;
 - (E) whether any written notice was given by certified mail, return receipt requested, or by registered mail; and
 - (F) whether the rent was current or had been timely tendered at the time notice was given;
 - (5) a description of the property condition materially affecting the physical health or safety of an ordinary tenant that the tenant seeks to have repaired or remedied;
 - (6) a statement of the relief requested by the tenant, including an order to repair or remedy a condition, a reduction in rent, actual damages, civil penalties, attorney's fees, and court costs;
 - (7) if the petition includes a request to reduce the rent:
 - (A) the amount of rent paid by the tenant, the amount of rent paid by the government, if known, the rental period, and when the rent is due; and
 - (B) the amount of the requested rent reduction and the date it should begin;
 - (8) a statement that the total relief requested does not exceed \$20,000, excluding interest and court costs but including attorney's fees; and
 - (9) the tenant's name, address, and telephone number.
- (b) Copies. The tenant must provide the court with copies of the petition and any attachments to the petition for service on the landlord.

(c) Forms and Amendments. A petition substantially in the form promulgated by the Supreme Court is sufficient. A suit may not be dismissed for a defect in the petition unless the tenant is given an opportunity to correct the defect and does not promptly correct it.

RULE 509.3. CITATION: ISSUANCE; APPEARANCE DATE; ANSWER

(a) Issuance. When the tenant files a written petition with a justice court, the judge must immediately issue citation directed to the landlord, commanding the landlord to appear before such judge at the time and place named in the citation.

(b) Appearance Date; Answer. The appearance date on the citation must not be less than 10 days nor more than 21 days after the petition is filed. For purposes of this rule, the appearance date on the citation is the trial date. The landlord may, but is not required to, file a written answer on or before the appearance date.

RULE 509.4. SERVICE AND RETURN OF CITATION; ALTERNATIVE SERVICE OF CITATION

(a) Service and Return of Citation. The sheriff, constable, or other person authorized by Rule 501.2 who receives the citation must serve the citation by delivering a copy of it, along with a copy of the petition and any attachments, to the landlord at least 6 days before the appearance date. At least one day before the appearance date, the person serving the citation must file a return of service with the court that issued the citation. The citation must be issued, served, and returned in like manner as ordinary citations issued from a justice court.

(b) Alternative Service of Citation.

(1) If the petition does not include the landlord's name and business street address, or if, after making diligent efforts on at least two occasions, the officer or authorized person is unsuccessful in serving the citation on the landlord under (a), the officer or authorized person must serve the citation by delivering a copy of the citation, petition, and any attachments to:

(A) the landlord's management company if the tenant has received written notice of the name and business street address of the landlord's management company; or

(B) if (b)(1)(A) does not apply and the tenant has not received the landlord's name and business street address in writing, the landlord's authorized agent for service of process, which may be the landlord's management company, on-premise manager, or rent collector serving the residential rental property.

(2) If the officer or authorized person is unsuccessful in serving citation under (b)(1) after making diligent efforts on at least two occasions at either the business street address of the landlord's management company, if (b)(1)(A) applies, or at each available business street address of the landlord's authorized agent for service of process, if (b)(1)(B) applies, the officer or authorized person must execute and file in the justice court a sworn statement that the officer or authorized person made diligent efforts to serve the citation on at least two occasions at all available business street addresses of the landlord and, to the extent applicable, the landlord's management company, on-premises manager, and rent collector serving the residential rental property, providing the times, dates, and places of each attempted service. The judge may then authorize the officer or authorized person to serve citation by:

(A) delivering a copy of the citation, petition, and any attachments to someone over the age of 16 years, at any business street address listed in the petition, or, if nobody answers the door at a business street address, either placing the citation, petition, and any attachments through a door mail chute or slipping them under the front door, and if neither of these latter methods is practical, affixing the citation,

petition, and any attachments to the front door or main entry to the business street address;

(B) Within 24 hours of complying with (b)(2)(A), sending by first class mail a true copy of the citation, petition, and any attachments addressed to the landlord at the landlord's business street address provided in the petition; and

(C) noting on the return of the citation the date of delivery under (b)(2)(A) and the date of mailing under (b)(2)(B).

The delivery and mailing to the business street address under (b)(2)(A)-(B) must occur at least 6 days before the appearance date. At least one day before the appearance date, a return Of service must be completed and filed in accordance with Rule 501.3 with the court that issued the citation. It is not necessary for the tenant to request the alternative service authorized by this rule.

RULE 509.5. DOCKETING AND TRIAL; FAILURE TO APPEAR

(a) Docketing and Trial. The case must be docketed and tried as other cases. The judge may develop the facts of the case in order to ensure justice.

(b) Failure to Appear.

(1) If the tenant appears at trial and the landlord has been duly served and fails to appear at trial, the judge may proceed to hear evidence. If the tenant establishes that the tenant is entitled to recover, the judge must render judgment against the landlord in accordance with the evidence.

(2) If the tenant fails to appear for trial, the judge may dismiss the suit.

RULE 509.6. JUDGMENT: AMOUNT; FORM AND CONTENT; ISSUANCE AND SERVICE; FAILURE TO COMPLY

(a) Amount. Judgment may be rendered against the landlord for failure to repair or remedy a condition at the residential rental property if the total judgment does not exceed \$20,000, excluding interest and court costs but including attorney's fees. Any party who prevails in a suit brought under these rules may recover the party's court costs and reasonable attorney's fees as allowed by law.

(b) Form and Content.

(1) The judgment must be in writing, signed, and dated and must include the names of the parties to the proceeding and the street address of the residential rental property where the condition is to be repaired or remedied.

(2) In the judgment, the judge may:

(A) order the landlord to take reasonable action to repair or remedy the condition;

- (B) Order a reduction in the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;
- (C) award a civil penalty of one month's rent plus \$500;
- (D) award the tenant's actual damages; and
- (E) award court costs and attorney's fees, excluding any attorney's fees for a claim for damages relating to a personal injury.

(3) If the judge orders the landlord to repair or remedy a condition, the judgment must include in reasonable detail the actions the landlord must take to repair or remedy the condition and the date when the repair or remedy must be completed.

(4) If the judge orders a reduction in the tenant's rent, the judgment must state:

- (A) the amount of the rent the tenant must pay, if any;
- (B) the frequency with which the tenant must pay the rent;
- (C) the condition justifying the reduction of rent;
- (D) the effective date of the order reducing rent;
- (E) that the order reducing rent will terminate on the date the condition is repaired or remedied; and
- (F) that on the day the condition is repaired or remedied, the landlord must give the tenant written notice, served in accordance with Rule 501.4, that the condition justifying the reduction of rent has been repaired or remedied and the rent will revert to the rent amount specified in the lease.

(c) **Issuance and Service.** The judge must issue the judgment. The judgment may be served on the landlord in open court or by any means provided in Rule 501.4 at an address listed in the citation, the address listed on any answer, or such other address the landlord furnishes to the court in writing. Unless the judge serves the landlord in open court or by other means provided in Rule 501.4, the sheriff, constable, or other authorized person who serves the landlord must promptly file a return of service in the justice court.

(d) **Failure to Comply.** If the landlord fails to comply with an order to repair or remedy a condition or reduce the tenant's rent, the failure is grounds for citing the landlord for contempt of court under Section 21.002 of the Texas Government Code.

RULE 509.7. COUNTERCLAIMS

Counterclaims and the joinder of suits against third parties are not permitted in suits under these rules. Compulsory counterclaims may be brought in a separate suit. Any potential causes of action, including a compulsory counterclaim, that are not asserted because of this rule are not precluded.

RULE 509.8. APPEAL: TIME AND MANNER; PERFECTION; EFFECT; COSTS; ON APPEAL

(a) **Time and Manner.** Either party may appeal the decision of the justice court to a statutory county court or, if there is no statutory county court with jurisdiction, a county court or district court with jurisdiction by filing a written notice of appeal with the justice court within 21 days after the date the judge signs the judgment. If the judgment is amended in any

respect, any party has the right to appeal within 21 days after the date the judge signs the new judgment, in the same manner set out in this rule.

(b) Perfection. The posting of an appeal bond is not required for an appeal under this rule, and the appeal is considered perfected with the filing of a notice of appeal. Otherwise, the appeal is in the manner provided by law for appeal from a justice court.

(c) Effect. The timely filing of a notice of appeal stays the enforcement of any order to repair or remedy a condition or reduce the tenant's rent, as well as any other actions.

(d) Costs. The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.

(e) Trial on Appeal. On appeal, the parties are entitled to a trial de novo. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. Either party is entitled to trial by jury on timely request and payment of a fee, if required. An appeal of a judgment of a justice court under these rules takes precedence in the county court and may be held at any time after the eighth day after the date the transcript is filed in the county court.

RULE 509.9. EFFECT OF WRIT OF POSSESSION

If a judgment for the landlord for possession of the residential rental property becomes final, any order to repair or remedy a condition is vacated and unenforceable.

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

CAUSE NUMBER (FOR CLERK USE ONLY): _____

STYLED

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This Sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

| | | | | | | | | | | | |
|--|---|------------------|----------------|------------|-----------------------|---------------------|--------------|--|------------------|--|--|
| I. Contact information for _____ person completing case information sheet: | 2. Names Of parties in ease: _____ | | | | | | | | | | |
| <table style="width:100%; border: none;"> <tr> <td style="width:35%; border: none;">Name: _____</td> <td style="width:35%; border: none;">Telephone: _____</td> </tr> <tr> <td style="border: none;">Address: _____</td> <td style="border: none;">Fax: _____</td> </tr> <tr> <td style="border: none;">City/State/Zip: _____</td> <td style="border: none;">State Bar No: _____</td> </tr> <tr> <td style="border: none;">Email: _____</td> <td></td> </tr> <tr> <td style="border: none;">Signature: _____</td> <td></td> </tr> </table> | Name: _____ | Telephone: _____ | Address: _____ | Fax: _____ | City/State/Zip: _____ | State Bar No: _____ | Email: _____ | | Signature: _____ | | Plaintiff(s): _____ _____ Defendant(S): _____ _____ _____ [Attach additional page as necessary to list all parties] |
| Name: _____ | Telephone: _____ | | | | | | | | | | |
| Address: _____ | Fax: _____ | | | | | | | | | | |
| City/State/Zip: _____ | State Bar No: _____ | | | | | | | | | | |
| Email: _____ | | | | | | | | | | | |
| Signature: _____ | | | | | | | | | | | |

| | |
|--|--|
| 3. Indicate case type; or identify the most important issue in the case (select only 1): | |
| Debt Claim: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than excluding statutory interest and coun costs but including attorne . fees, . an | Eviction: An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$10,000, excluding stat1.110t•y interest and coun costs but including attorney fees, if any. |

Repair and Remedy: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.

[A Small Claims: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.

CASE NUMBER _____ (to be filled by clerk)

AND REMEDY PLAINTIFF'S
ORIGINAL PETITION

STATE OF TEXAS

COUNTY OF LUBBOCK

Justice Of the peace, Precinct

Judge Jim Hansen

I

PLAINTIFF'S INFORMATION

YOUR NAME _____

(You are the Plaintiff)

PLAINTIFF'S FULL ADDRESS- Street name and number, City, State, and Zip Code or the property where the REPAIR AND REMEDY situation exist:

THE PROPERTY ADDRESS MUST BE CLEARLY
MARKED (UNIT 1.

A, etq)

THE PROPERTY ADDRESS
IN NOT

AND UNAMBIGUOUS.

THE CONSTABLE MAY RETURN THE CITATION.
CAUSING

DELAY AND COST IN YOUR CASE.

TELEPHONE(____) _____

FAX NUMBER (____) _____

EMAIL _____

Initial if you consent to email notification in this case

DEFENDANT'S INFORMATION (Complete as best you can)

To the extent known, please provide the following information of the landlord and landlord's management company:

NAME (Landlord) _____

(Landlord's Management _____

(Landlord's On Premises _____

(Landlord's rent Collector)(put _____

Company)(put SAME if there is none)

manager)(put SAME if there is none)

SAME if there is none)

Please provide the information for EACH of the above (if more than one you may list name and info) on back- leave BLANK if you do not know the information)
FULL ADDRESS (STREET NAME AND NUMBER, CITY, STATE, ZIP) REQUIRED

TELEPHONE (m) _____ FAX NUMBER (____) _____
EMAIL _____

The Plaintiff shall give a description of the property condition materially affecting the physical health or safety of an ordinary tenant that the tenant seeks to have repaired or remedied (Please type or write clearly so it can be read)

Please attach a copy (if you have it) of all notices the tenant gave to the landlord requesting that the condition be repaired or remedied, and advise:

- (A) the date of the notice

- (B) the name of the person to whom the notice was given or the place where the notice was given
- (C) whether the tenant's lease is in writing and requires written notice;
- (D) whether the notice was in writing or oral;
- (E) whether any written notice was given by certified mail, return receipt requested, or by registered mail
- (F) whether the rent was current or had been timely tendered at the time notice was given

State the relief requested by the tenant, including an order to repair or remedy a condition, a reduction in rent, actual damages, civil penalties, attorney's fees, and court costs;

If you are including a request to reduce the rent, please state:

(A) the amount of rent paid by the tenant, the amount of rent paid by the government, if known, the rental period, and when the rent is due

(B) the amount of the requested rent reduction and the date it should begin;

I do attest that the total relief requested does not exceed \$1 excluding interest and court costs but including attorney's fees

Plaintiff Signature

The tenant must provide the court with copies of the petition and any attachments to the petition for service on the landlord.