

# REPAIR AND REMEDY

ATTENTION:

09/13

**NEITHER THE COURT NOR ITS PERSONNEL CAN GIVE LEGAL ADVICE.**

The information contained in this packet is not offered as legal advice. The information is not exhaustive. There may be other remedies and procedures not contained in this packet. You should seek professional, licensed, legal counsel for advice.

## **WHERE CAN I LOOK UP THE LAWS OF TEXAS?**

The Texas Statutes are available on-line at: <http://www.statutes.legis.state.tx.us>. Most laws about a repair and remedy case are contained in the Texas Property Code, Chapter 92, Subchapter B, Landlord's Duty to Repair or Remedy, as well as the Texas Rules of Court. You may also visit the Hays County Law Library located at 712 South Stagecoach Trail, Suite 2026, San Marcos, Texas 78666 during the hours of Monday – Friday 8:00 am to 4:30 pm.

## **WHAT IS A REPAIR AND REMEDY CASE?**

A Repair and Remedy case is a lawsuit brought to seek judicial remedy for the alleged failure of a landlord to remedy or repair a condition as required by Chapter 92 of the Texas Property Code. The relief sought can be for no more than \$10,000 in damages excluding statutory interest and court costs but including attorney fees, if any.

## **DO I HAVE TO HIRE A LAWYER TO FILE A REPAIR AND REMEDY CASE?**

An individual may represent himself or herself; be represented by an authorized agent in an eviction case; or be represented by an attorney. A corporation or other entity may be represented by an employee, owner, officer or partner of the entity who is not an attorney; be represented by property manager or other authorized agent in an eviction case; or be represented by an attorney

## **WHAT DO I HAVE TO DO BEFORE FILING THE REPAIR AND REMEDY CASE?**

Tenant must specify the condition in a written notice, if the lease is in writing; the condition in need of repair to the person to whom or to the place where rent is normally paid. The Tenant must not be delinquent in the payment of rent at the time notice is given; and the condition materially affects the physical health or safety of an ordinary tenant.

## **WHERE DO I FILE FOR REPAIR AND REMEDY?**

The Justice Court in the precinct in which the real property is located has jurisdiction in Repair and Remedy suits. See Texas Civil Practice & Remedies Code, Section 15.0115.

## **HOW MUCH WILL IT COST TO FILE?**

The initial filing fee is \$56.00 plus the cost of service of the citation to the Defendant.

## **CITATION**

Each Defendant must be served personally, usually by a Constable or Sheriff, in the County where the Defendant is located. Hays County charges \$75.00 per Defendant and payment can be included with payment of the filing fee to the Court.

It is your responsibility to ensure service of your citations. If you obtain a better address for the Defendant, call the agency and provide the new information as soon as possible.

**NOTE:** Except for citations and papers served by personal process, you must mail a copy of all papers filed with the Court to all other parties to the lawsuit.

## **HOW LONG WILL IT TAKE TO COME TO COURT?**

Once suit is filed, the citation will be issued by the Court Clerk and delivered to the Constable's Office. The appearance date must not be less than 10 days nor more than 21 days from the date petition is filed.

## **WILL I HAVE A TRIAL?**

A trial will be scheduled 10-21 days from the date the Petition is filed.

The Tenant must have the following information:

- Street address of residential property,  
Statement indicating whether the tenant has received in writing the name and business street address of the landlord and landlord's management company,
- For all notices the tenant gave to landlord requesting condition be repaired or remedied, the Tenant must have:
  - a. Date of notice
  - b. Name of person to whom notice was given or place where notice was given
  - c. Lease is in writing or oral
  - d. Whether any written notice was given by certified mail, return receipt requested, or registered mail
  - e. Whether rent was current or had been timely tendered at the time notice was given
- Description of the property condition materially affecting the physical health or safety,
- Statement of the relief requested by tenant, including an order to repair or remedy a condition, reduction in rent, actual damages, civil penalties, attorney fees and court costs,
- If the petition includes a request to reduce the rent, it must include:
  - a. amount of rent paid by tenant and amount of rent paid by government, if applicable; rental period; when rent is paid)
  - b. Amount of the requested rent reduction and the date it should begin
- Statement that total relief requested does NOT exceed \$10,000, excluding interest and court costs, BUT including attorney's fees.
- Tenant's name, address and telephone number

In contested matters, the tenant (plaintiff) has the burden of proof in judicial action to enforce a right resulting from the landlord's failure to repair or remedy a condition under Section 92.052, Texas Property Code.

### Hays County Constable's Offices:

Precinct 1	512-393-7730	Precinct 4	512-858-7605
Precinct 2	512-268-0785	Precinct 5	512-295-3030
Precinct 3	512-847-5532		

## **I LOST THE CASE—CAN I APPEAL?**

*Time and manner.* Either party may appeal the decision of the justice court to the Hays County Court 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.

*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.

*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.

*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 a 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.

For addition questions about court costs or court dates contact the County Clerk's office at (512)393-7330.