Self-Help Legal Information Packet: Filing a Repair and Remedy Case

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What is a Repair and Remedy Case?

Landlords are required by law to "repair or remedy" (meaning to fix) certain conditions that materially affect the physical health or safety of an ordinary tenant (for example, mold, roof leaks or infestation of rodents). If you are renting your residence and the landlord fails to do this, you might be able to file a repair and remedy case against the landlord.

What Conditions Must a Landlord Fix?

A landlord must make a diligent effort to repair or remedy a condition that:

- Materially affects the physical health or safety of an ordinary tenant; or
- Results from the landlord failing to provide hot water at a minimum temperature of 120 degrees.

May a Lease Require Me to Make Repairs?

Yes, in some circumstances a written lease may require you to make repairs at your expense if:

- the landlord owns only one rental dwelling when the lease is signed; and
- there are no conditions at that time that materially affect the physical health or safety of an ordinary tenant; and
- the landlord has no reason to believe any such conditions are likely to occur.

If you have a written lease you should read it carefully to see if there are any such terms, which have to be either underlined or printed in **boldface** or in a separate document attached to the lease.

Your lease may also require you to pay for repairs of the following conditions (unless caused by the landlord's negligence):

- Damage from wastewater stoppages caused by foreign or improper objects in lines that exclusively serve your residence;

- Damage to doors, windows, or screens; and

- Damage from windows or doors left open.

When May I File a Repair or Remedy Case?

You may file a repair or remedy case when your landlord fails to fix a condition of your residence that he is required to fix **if:**

- The condition materially affects the physical safety or health of an ordinary tenant or results from the landlord failing to provide hot water at a minimum temperature of 120 degrees;

- The condition was not caused by you, an occupant, or a member of your family or a guest, unless it was due to normal wear and tear;

- The condition was not an insured casualty loss (for example, a case cannot be filed to repair a condition caused by a fire that is covered by insurance);

- You told your landlord about the condition by giving a notice to the person or place where you normally pay your rent (see below for details about the notice; a notice form is available on our website at www.tjctc.org/SRL);

- The landlord has had a reasonable time to repair or remedy the condition after receiving your notice (see below about what is a reasonable time);

- The landlord has not made a diligent effort to repair or remedy the condition after receiving your notice; **and**

- ***You were not behind in your rent at the time any required notice was given.***

Please note that many tenants stop paying rent due to frustration about a lack of repairs. But this means that the landlord no longer has an obligation to make the repairs, and you will lose your repair and remedy case!

How Do I Have to Send the Notice?

If you send the notice by certified mail, return receipt requested, or registered mail, or by a form of mail that allows tracking of delivery by the USPS or a private delivery service, you only have to send one notice.

But if you send a written notice by some other means, or you give oral notice, then you must give your landlord a subsequent written notice after a reasonable time to repair or remedy the condition after giving the first notice. (The first notice may also have to be in writing if you have a written lease that requires a written notice.)

What is a Reasonable Time for the Landlord to Make Repairs?

Seven days is presumed to be a reasonable time but other factors might affect what is a reasonable time, including the date when the landlord receives your notice, the severity and nature of the conditions and the availability of materials and labor or utilities.

Also, if a condition results from an insured casualty loss, such as fire, flood, smoke, hail or explosion, the period for repair does not begin until the landlord receives the insurance proceeds.

May the Landlord Just Close the Premises?

Yes, the landlord may close the rental property after receiving a notice to repair or remedy a condition, but if they do so they may have to pay your moving expenses, refund a portion of your rent, and return your security deposit.

Do I Have Other Options Besides Filing a Repair and Remedy Case?

Yes; if a landlord fails to repair or remedy a condition that they are required to fix then you may have a right to terminate your lease or, in certain limited circumstances and after following certain specific procedures, you may have a right to have the condition repaired or remedied and deduct the cost from a rent payment after you have paid for the repairs. If you wish to pursue either of these options, we strongly suggest you consult with an attorney who may advise you on precisely what steps you have to take. Attorney contact information, including for legal aid services that provide low- or no-cost legal advice, may be found at www.tjctc.org/SRL.

If I File a Repair and Remedy Case What May I Ask the Court to do?

If you file a repair and remedy case you may ask the court for some or all of the following:

- An order directing the landlord to take reasonable action to repair or remedy the condition;
- An order reducing your rent from the date of the first notice you sent the landlord concerning the condition until the condition is repaired or remedied;
- A judgment against the landlord for a civil penalty of one month's rent plus $500;
- A judgment against the landlord for the amount of your **actual damages** (meaning monetary losses you incurred directly as a result of the condition, such as the cost of a hotel that you had to stay at because your residence was not livable); and
- Court costs and attorney's fees (if you have an attorney).

How Do I File a Repair and Remedy Case?

To file a repair and remedy case you may file a **petition** with a justice court. A petition is a form that says who you are suing, why you are suing them, what you are suing them for, and gives your contact information. A petition form for a repair and remedy case is available on our website (www.tjctc.org/SRL).

A petition in a repair and remedy case must contain the following information:

- The address of the premises where the repairs were not made;

- Whether you received in writing the name and business address of the landlord and landlord's management company;

- To the extent you know it, 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 rental property;

- Information concerning any notices you gave the landlord requesting that the condition be repaired or remedied, including:

    - the date of the notice;

    - the name of the person to whom or place where it was given;

    - whether the lease is in writing and requires written notice;

    - whether the notice was in writing or oral;

    - whether it was given by certified mail, return receipt requested, or registered mail; and

    - whether your rent was current or had been timely offered at the time the notice was given;

- A description of the property condition that you are asking to have repaired or remedied;

- A statement of what you are asking the court to do, such as an order to repair or remedy the condition, a reduction in rent, actual damages, civil penalties, attorney's fees, and court costs;

- If you are asking for a reduction in rent, then you need to state the amount of rent you have paid, the amount of rent paid by the government, if known, the rental period and when the rent is due, and the amount of the requested rent reduction and when it should begin;

- A statement that the total relief requested does not exceed $10,000, excluding interest and court costs but including attorney's fees; and

- Your name, address, and telephone number and whether you agree to receive any other papers or orders filed in the case by email.

Where do I File the Petition?

You may file the petition in any justice court in the county in which you live. (You may also file the petition in a county court or a district court, but the information in this packet only applies to a justice court.) When you file the petition, you must provide the court with copies of the petition and any

attachments so the court may have the petition served on (meaning formally delivered to) the landlord.

Is There a Filing Fee?

Yes, the standard filing fee for a case in justice court is $46 in most counties until December 31, 2021; and $54 in most counties on or after January 1, 2022. Also, notice of the case will have to be served on the landlord (see below). If you wish to have the constable or sheriff serve the papers, a service fee of around $80-100, depending on the county, will also be charged.

If you are unable to pay the filing and service fees, you may fill out and file a Statement of Inability to Afford Payment of Court Costs form. This form is available from the court and is also available on our website (www.tjctc.org/SRL).

You must swear to the information that you provide on this form and can face serious legal consequences if you do not fill it out accurately and to the best of your ability. If you use this form, fill it out completely and truthfully.

Is There a Limit on How Much I Can Ask For?

Yes, a justice court may not award a judgment in a repair and remedy case for more than $10,000 (excluding interest and court costs) or order a repair and remedy that would cost more than $10,000. If the amount you are seeking is more than $10,000, the justice court will have to dismiss your case and you will have to file it in a county court or a district court.

What Happens After I File the Petition?

After you file the petition, the judge will issue a citation that tells the landlord they are being sued and orders them to appear in court on a date set by the judge not less than 10 days or more than 21 days after your petition was filed. That date is the trial date.

How is the Citation Served on the Landlord?

The citation may be served on the landlord by a sheriff, a constable, a private process server, or another person authorized by the court to serve the citation. It is up to you to decide whether you want the sheriff or constable to serve the citation or to hire a private process server to do this. You will have to pay a service fee to the sheriff or constable (set by the county) or to the private process server (whatever rate they charge). If you cannot afford the service fee you may submit a Statement of Inability to Afford Payment of Court Costs.
The citation must be served on the landlord at least six days before the trial date.

How Do I Send Paperwork to the Landlord?

Any paperwork such as motions, requests for a hearing, appeals, etc., must be sent to the landlord (the defendant) as well as to the court. You can send those papers to the landlord by:

1) delivering the papers to them in person,
2) mailing the papers to them using certified or registered mail,
3) using a delivery service such as FedEx or UPS,
4) faxing the papers to them, or

5) sending the papers by email if they provided their email address for document delivery and agreed to email service in writing.

On the copy you give the court, you must write down how and when the paperwork was delivered to the defendant.

What if We Reach an Agreement?

If the case goes to trial, usually there will be a "winner" and a "loser," resulting in someone being happy and someone being unhappy. To reduce that risk, sometimes parties will come to a **settlement**, or an agreement on how to resolve the case. If you reach a new agreement with the landlord in which they agree to repair or remedy the conditions that caused you to file the suit, you will need to file a **nonsuit**, which is a request for your case to be dismissed. If the landlord then breaches the new agreement by failing to repair or remedy the conditions, you will have to start over and file a new repair and remedy suit after giving the landlord proper notice of the conditions or you will have to file a suit to enforce the settlement agreement (which might have to be filed in a county or district court). In this situation we would recommend that you consult an attorney who can advise you on the best way to proceed. Attorney contact information, including for legal aid services that provide low- or no-cost legal advice, may be found at www.tjctc.org/SRL.

Can I Have a Jury Trial?

Yes. Either side in a repair and remedy case may request a jury trial. The rules say that you must make a request in writing to the court at least 14 days before the date set for trial and pay a

jury fee of $22 (unless you cannot afford it and file a Statement of Inability to Afford Payment of Court Costs). Therefore, if you know you will want a jury when you file your petition, you should request a jury at that time. You may even do this in the petition itself. (If you request a jury less than 14 days before trial, the judge may still allow a jury but is not required to do so.)

If no one requests a jury, the trial will be heard by the judge alone, which is called a bench trial.

What if I Need More Time for Trial?

If you need more time for trial or have a conflict with the date on which the trial is scheduled, you may file a motion (a request) for **postponement**, also called a **continuance**. You should explain in writing why you need the postponement. **Do not** just decide not to show up on your trial date! That will probably result in your case being dismissed.

What Happens at the Trial?

Be sure to bring all of your documents and witnesses with you on your trial date!

If the trial is a jury trial, the first step will be jury selection, which is formally called **voir dire**. You are allowed to talk to the people who have been called for jury duty to make sure they are able to be fair and impartial.

Next, you may give an opening statement if you wish, where you explain to the judge and jury what the case is about.

After that, you may testify (tell your side of the story under oath) and present any evidence you may have, such as photos, notices, receipts or any official documents concerning the condition of your residence. You may also call any witnesses (such as a housing inspector) to testify and ask them questions so they can explain what they know to the judge or jury. The landlord (or their attorney) will also be able to ask you and your witnesses questions after you testify; this is called **cross-examination**.

Next, the landlord may present any evidence and call any witnesses they may have. You are allowed to ask questions of the landlord and their witnesses on cross-examination as long as they relate to the facts of the case. You should remain calm, polite, and respectful of the court process, even if you disagree with what other witnesses say.

Finally, after the testimony ends, each side may make a final statement, called a **closing argument**, in which each side explains why they think they should win.

After that, the decision will be made by the jury if there is one, or by the judge if there is no jury. The decision will be announced in open court, and a written **judgment** will be made available.

What May the Judgment Include?

In a repair and remedy case the judgment may:

- Order the landlord to take reasonable action to repair or remedy the condition;

- Order a reduction in your 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;
- Award a civil penalty of one month's rent plus $500;

- Award you actual damages (meaning monetary losses you incurred directly as a result of the condition); and

- Award court costs and attorney's fees (if any).

What if the Landlord Doesn't Appear for Trial?

If the landlord (or someone appearing for them like a property manager or an attorney) does not show up for the trial, the judge may go ahead and hear your testimony and evidence and if you show that you are entitled to win, the judge will enter a judgment against the landlord. This is known as a default judgment.

To get a default judgment, you will also need to provide the last known address of the defendant to the court in writing, as well as an affidavit stating whether or not the defendant is on active duty in the U.S. military (or that you do not know if they are), and how you know that they are or are not, or why you do not know if they are. You can verify military service at this link: https://scra.dmdc.osd.mil/.

What Happens if the Landlord Doesn't Comply With the Court's Order?

If the landlord fails to comply with an order to repair or remedy a condition or to reduce your rent, you may ask the judge to hold the landlord in contempt of court. If the judge agrees, the landlord could be subject to a fine of up to $100 and/or up to three days in jail.

May I Appeal if I Lose My Case?

Yes. Either side (you or the landlord) may appeal the decision of the justice court by filing a written **notice of appeal** with the justice court within 21 days after the date the judge signs the judgment and, on or after January 1, 2022, paying the standard filing fee which will then be $54 in most counties. The case will then be sent to a county court (in some counties it may go to a district court) and that court will hear the case from the start as if it were a brand new case. If you are the one who is appealing you will have to pay a filing fee for the appeal in both the justice court and in the county court (unless you have filed a Statement of Inability to Afford Payment of Court Costs). Once a notice of appeal is filed, the justice court's order to repair or remedy a condition or to reduce your rent is put on hold until the case is heard by the county court.

Resources

Texas Lawyer Referral Service - (800) 252-9690

To check military status – https://scra.dmdc.osd.mil/

Texas Justice Court Training Center information for self-represented litigants, including forms – www.tjctc.org/SRL

Texas Justice Court Training Center Evictions Deskbook at pages 120 – 129 – www.tjctc.org/tjctc-resources/Deskbooks.html

Office of Court Administration Self-Represented Litigant Site: www.txcourts.gov/programs-services/self-help/self-represented-litigants/

State Bar of Texas Information, including Legal Information and Low or No-Cost Legal Assistance: www.texasbar.com, and then click on “For The Public.”