

FILING A REPAIR AND REMEDY CASE

JURISDICTION:

Repair and Remedy Case:

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 for no more than \$20,000, excluding statutory interest and court costs but including attorney fees, if any. Repair and remedy cases are governed by Rules 500-507 and 509 of Part V of the Rules of Civil Procedure.

VENUE:

General Rule. Generally, a defendant in a small claims case or a debt claim case is entitled to be sued in one of the following venues:

1. The county and precinct where the defendant resides;
2. The county and precinct where the incident, or the majority of incidents, that gave rise to the claim occurred
3. The county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed; or
4. The county and precinct where the property is located, in a suit to recover personal property.

FILING SUIT:

The **responsibility for filling out your petition and civil case information sheet rests with you**. Court clerks will assist you if you have **procedural questions**. The filing fee is \$54.00 and the service fee is \$90.00 **per defendant** to be served in Caldwell County, for a total of **\$144.00**. If the defendant(s) resides outside of Caldwell County, contact the court for service fees of other counties.

****Payment must be in the form of a MONEY ORDER or CASHIER'S CHECK payable to CALDWELL COUNTY TREASURER.****

CITATION:

The citation is sent to the Caldwell County Constable for service. Out of County service is sent to the Sheriff or Constable of the county in which the defendant(s) reside or any manner authorized for service of citation in district, county or justice court. **You as Plaintiff are responsible for providing a correct address for service.**

DISCOVERY:

Pretrial Discovery. Pretrial discovery is limited to that which the judge considers reasonable and necessary. Any request for pretrial discovery must be presented to the court for approval by written motion. The motion must be served on the responding party. The discovery request must not be served on the responding party unless the judge issues a signed order approving the request. Failure to comply with a discovery order can result in sanctions.

REPRESENTATION:

You as an individual may represent yourself in Justice Court or you may have an attorney represent you. The Rules of Evidence do not apply in Justice Court.

APPEARANCE FOR TRIAL:

The defendant in the suit is commanded to appear before the Court, on the date and time set by the Court. This date shall be not less than 10 days nor more than 21 days after the petition is filed.

Any party is entitled to a trial by jury. A written demand for a jury must be filed no later than 14 days before the case is set for trial. A party demanding a jury must pay a fee of \$22.00. If the demand is not timely, the right to a jury trial is waived.

AFTER JUDGMENT:

APPEAL:

Either party may appeal the decision of the Justice court to the County court by filing a written notice of appeal with the Justice Court within 21 days after the date the judge signs the judgment.

THIS COURT DOES NOT COLLECT THE JUDGMENT FOR YOU.

If you receive a judgment and the defendant does not make a motion for a new trial within *14 days* or appeal the case within *21 days* after the judgment is signed, the following remedies are available:

- ABSTRACT OF JUDGMENT:

The fee is \$5.00 (money order or cashier's check) for the JP Court to prepare. You should then record the Abstract of Judgment in the County where the defendant resides.

- WRIT OF EXECUTION

If you are granted a judgment against the defendant AND if the defendant does not appeal within 21 days, you may request a Writ of Execution any time after the 30th day after the judgment is signed. A Writ of Execution allows a Sheriff or Constable in the State of Texas to seize nonexempt property from the defendant in order to satisfy the judgment.

The cost of filing a Writ of Execution is \$250.00 for filing and service in Caldwell County. (money order or cashier's check)

You may have other remedies available, but they are more complicated and are not covered here. Please consult an attorney for any other remedies you may have to collect your judgment.

If your address changes within a 10 year period following the judgment, it is your responsibility to notify the court of your new address.

IF YOU HAVE PROCEDURAL QUESTIONS, PLEASE CONTACT THE COURT

**LEGAL QUESTIONS WILL NOT BE
ANSWERED BY THIS OFFICE**

Case No. _____

Tenant: _____
V.
Landlord: _____

In the Justice Court
Precinct 2 Place 1
CALDWELL County, Texas

PETITION FOR RELIEF UNDER SECTION 92.0563 OF THE TEXAS PROPERTY CODE

1. COMPLAINT: Tenant files this petition against the above-named Landlord pursuant to Section 92.0563 of the Texas Property Code because there is a condition on Tenant's residential rental property that would materially affect the health or safety of an ordinary tenant.
Information Regarding Residential Rental Property:

Street Address Unit No. (if any) City County State Zip

Landlord's Contact Information (to the extent known)

Business Street Address Unit No. (if any) City County State Zip Phone Number

2. SERVICE OF CITATION: Check the box next to each statement that is true.

Tenant received in writing Landlord's name and business street address.

Tenant received in writing the name and business street address of Landlord's management company.

The name of Landlord's management company is _____ To Tenant's knowledge, this is the management Company's contact information:

Business Street Address Unit No. (if any) City County State Zip Phone Number

The name of the Landlord's on-premise manager is _____. To Tenant's knowledge, this is the on-premise manager's contact information:

Business Street Address Unit No. (if any) City County State Zip Phone Number

The name of Landlord's rent collector serving the residential rental property is _____. To Tenant's knowledge, this is the rent collector's contact information:

Business Street Address Unit No. (if any) City County State Zip Phone Number

3. LEASE AND NOTICE: Check the box next to each statement that is true.

The lease is oral. The lease is in writing. The lease requires the notice to repair or remedy a condition to be in writing.

Tenant gave written notice to repair or remedy the condition on _____. The written notice to repair or remedy the condition was sent by certified mail, return receipt requested, or registered mail on _____.

Tenant gave oral notice to repair or remedy the condition on _____.
Name of person(s) to whom notice was given: _____
Place where notice was given: _____

4. RENT: At the time Tenant gave notice to repair or remedy the condition, Tenant's rent was: current (no rent owed), not current but Tenant offered to pay the rent owed and Landlord did not accept it, or not current and Tenant did not offer to pay the rent owed. Tenant's rent is due on the _____ day of the month week _____ (specify any other rent-payment period). The rent is \$ _____ per month, week, _____ (specify any other rent-payment period). Tenant's rent (check one): is not subsidized by the Government is subsidized by the government as follows: if known: \$ _____ paid by the government, and \$ _____ paid by Tenant.

5. PROPERTY CONDITION: Describe the property condition materially affecting the physical health or safety of an ordinary tenant that Tenant seeks to have repaired or remedied: _____

6. RELIEF REQUESTED: Tenant requests the following relief: a court order to repair or remedy the condition, a court order reducing Tenant's rent (in the amount of \$ _____ to begin on _____), actual damages in the amount of \$ _____, a civil penalty of one month's rent plus \$500, attorney's fees, and court costs. Tenant states that the total relief requested does not exceed \$10,000, excluding interest and court costs but including attorney's fees.

Tenant Signature: _____ Date: _____

Street Address Unit No. (if any) Phone Number
City State Zip

FORM 127 – SERVICEMEMBER'S CIVIL RELIEF ACT

CAUSE NO. _____

AFFIDAVIT
50 USC Sec. 520

Plaintiff being duly sworn on oath deposes* and says that defendant(s) is (are)

(CHECK ONE)

- not in the military
- not on active duty in the military and/or
- not in a foreign country on military service
- on active military duty and/or is subject to the Servicemembers Civil Relief Act of 2003
- has waived his/her rights under the Servicemembers Civil Act of 2003
- military status is unknown at this time

PLAINTIFF

(Select the applicable title under the signature for the jurat below)

Subscribed and sworn to before me no this the _____ day of _____, 20__.

NOTARY / CLERK

Notary Public in and for the State of Texas

Clerk of the Justice Court

SEAL

***Penalty for making or using false affidavit – a person who makes or uses an affidavit knowing it to be false, shall be fined as provided in Title 18, United States Code, or imprisoned for not more than one year or both.**