

## 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 \$10,000.00, 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 fifty four (\$54.00) and the service fee is ninety (\$90.00) **per defendant** to be served in Caldwell County, for a total of **one hundred forty-four (\$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 30<sup>th</sup> 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**

CAUSE NO. \_\_\_\_\_

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT NO. _____
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

**PETITION: REPAIR AND REMEDY CASE**

**COMPLAINT:** Plaintiff files this petition against the above-named Defendant pursuant to Rule 509 of the Texas Rules of Civil Procedure and Section 92.0563 of the Texas Property Code because there is a condition in Plaintiff's residential rental property that would materially affect the health or safety of an ordinary Plaintiff.

**Information Regarding Residential Rental Property:**

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

Defendant's Contact Information (to the extent known):

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

**SERVICE OF CITATION:** Plaintiff requests service of the citation on the Defendant, and if required, alternative service pursuant to Rule 509.4 of the Texas Rules of Civil Procedure. Plaintiff will check the box next to each statement that is true:  Plaintiff received in writing Defendant's name and business street address.  Plaintiff received in writing the name and business street address of Defendant's management company.  The name of Defendant's management company is \_\_\_\_\_. To Plaintiff's knowledge, this is the management company's contact information:

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

The name of Defendant's on-premises manager is \_\_\_\_\_. To Plaintiff's knowledge, this is the on-premises manager's contact information:

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

The name of Defendant's rent collector serving the residential rental property is \_\_\_\_\_. To Plaintiff's knowledge, this is the rent collector's contact information:

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

**PROPERTY CONDITION:** The property condition materially affecting the physical health or safety of an ordinary Plaintiff that Plaintiff seeks to have repaired or remedied is:

**LEASE AND NOTICE:** Plaintiff will check the box next to each statement that is true:

Justice of the Peace, Pct 3  
PO Box 145, Maxwell, Texas 78656  
512-357-6729 512-357-6833 (fax)

The lease is oral.  The lease is in writing.  The lease requires the notice to repair and remedy a condition to be in writing.  Plaintiff 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 \_\_\_\_\_.  Plaintiff gave oral notice to repair or remedy the condition on \_\_\_\_\_. Name of person(s) to whom notice was given: \_\_\_\_\_  
\_\_\_\_\_. Place where notice was given:  
\_\_\_\_\_

**RENT:** At the time Plaintiff gave notice to repair or remedy the condition, Plaintiff's rent was:

current (no rent owed);  not current but Plaintiff offered to pay the rent and Defendant did not accept it; or  not current and Plaintiff did not offer to pay the rent owed.

Plaintiff's rent is due on the \_\_\_\_ day of the  month  week  \_\_\_\_\_ (specify any other rent-payment period). Plaintiff's rent is \$\_\_\_\_\_ per  month  week  \_\_\_\_\_ (specify any other rent-payment period). Plaintiff's rent:  is not subsidized by the government  is subsidized by the government as follows, if known: \$\_\_\_\_\_ paid by the government, and \$\_\_\_\_\_ paid by Plaintiff.

**RELIEF REQUESTED:** Plaintiff requests the following relief (check all that apply):  a court order to repair or remedy the condition;  a court order reducing Plaintiff'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. Plaintiff states that the total relief requested does not exceed \$10,000, excluding interest and court costs but including attorney's fees.

I hereby request a jury trial. The fee is \$22 and must be paid at least 14 days before trial.

I hereby consent for the answer and any other motions or pleadings to be sent to my email \_\_\_\_\_ address \_\_\_\_\_ as follows: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff's Printed Name

\_\_\_\_\_  
Signature of Plaintiff  
or Plaintiff's Attorney

\_\_\_\_\_  
Address of Plaintiff  
or Plaintiff's Attorney

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone & Fax No. of Plaintiff  
Or Plaintiff's Attorney

**SERVICEMEMBER'S CIVIL RELIEF ACT**

CASE NO. \_\_\_\_\_

**AFFIDAVIT**

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

Subscribed and sworn to before me no this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY / CLERK

Notary Public in and for the State of Texas

\_\_\_\_\_  
SEAL

Clerk of the Justice Court

**\*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.**