



Judge Jody Henry
Justice of the Peace
Precinct 1 | Cooke County

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REPAIR AND REMEDY CASES

A repair and remedy case is a lawsuit 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.

The information in this document is intended to give a brief overview of the procedures of a repair and remedy suit. It is not, however, exhaustive and many issues and procedures are not covered herein. You should consult the [Texas Rules of Civil Procedure](#) for a more comprehensive overview of the procedure. Part V (Rules 500-510) apply to justice courts with Rule 509 addressing repair and remedy cases specifically. All references to a *TRCP* in this document refer to these rules. You may also need to refer to various [Texas Statutes](#) regarding your case including Texas Property Code [Chapter 92 Subchapter B](#).

Nothing contained in this document is intended or offered as legal advice. Please also note that court clerks are not licensed attorneys and cannot give legal advice. This document should be able to answer your basic procedural questions. For further questions or more information, you should seek a licensed attorney.

BEFORE FILING SUIT

Before filing a repair and remedy suit, a plaintiff should choose the court with the proper jurisdiction, proper venue, and know the proper party or parties to be sued.

Venue

A repair and remedy suit should be filed in the county and precinct where the property is located. The [precinct map](#) can be used to ensure that the case is filed the proper court. The court clerks cannot make this determination.

Prerequisites to Filing Suit

Texas Property Code [Chapter 92 Subchapter B](#) sets out specific procedures that a tenant must follow in giving a landlord notice of a condition prior to filing a repair and remedy suit. A plaintiff should ensure that all of these procedures are followed properly in order to successfully bring a repair and remedy suit.

FILING THE SUIT

To file a repair and remedy suit, several documents (called pleadings) must be prepared and provided to the court clerk. Forms for many of these documents are available from the court or found on our website. However, please note you are not required to use these forms and may prepare your own documents. ***You are responsible for making sure you file the correct documents, and all forms are filled out correctly.***

Pleading

A *Petition* is the original document filed with the court to initiate a lawsuit and to notify the defendant of the nature of the suit. There are several requirements for the contents of a petition in a repair and remedy suit which can be found in the Texas Rules of Civil Procedure. (TRCP 509.2)

Along with the petition, the plaintiff must file a *Justice Court Civil Case Information Sheet*. (TRCP 502.2(b))

Filing Fees

In order to initiate a lawsuit, the plaintiff is required to pay filing fee in the amount of \$54.00 or file a Statement of Inability to Afford Payment of Court Costs. Payment must be by cash, credit card, or money order/cashier's check. Personal checks are not accepted.

A service fee of \$100.00 will be charged at the time of filing for the constable to serve the defendant. (See *Service of Citation* below for more information.)

DURING THE SUIT

Service of Citation

A defendant named in the lawsuit must be personally served with the citation and petition in accordance with TRCP 509.4. The plaintiff may choose to have a constable or sheriff of the applicable county serve the citation and petition, or the plaintiff may choose to use a private process server. Once service is complete, the process server should fill out the *Return of Service* and file it with the court.

The court clerk will prepare the citation and provide it either to the Cooke County constable or to the plaintiff to be given to the chosen process server. It is ultimately the plaintiff's responsibility to ensure that all citations are properly served and that the return of service is filed with the court. Questions about this process should be directed to the constable or process server.

Answer

Once the defendant is served, he or she may file an *Answer* with the court but is not required to do so. If the defendant files an answer, he or she should also provide a copy to the plaintiff.

Trial Setting

Once the petition is filed, the court clerk will set the case for a hearing not less than 10 days and not more than 21 days after the petition is filed. At the time of accepting the petition, the court clerk will notify the plaintiff of the date and time of the hearing. The defendant will receive notice of this trial setting on the citation prepared by the court and served on the defendant. The plaintiff is required to appear at this trial setting and must prove the case by the *preponderance of the evidence*.

Judgment

If the plaintiff fails to appear at the trial, the court will dismiss the suit. If the defendant is properly served, but fails to appear at the hearing and has not filed an answer, the court will proceed to hear the evidence.

If after hearing the evidence of the plaintiff and the defendant, if present, the court finds that the plaintiff has proved the case by the preponderance of the evidence, the court will grant a judgment in favor of the plaintiff. If the court finds that the plaintiff failed to meet this burden, the court will grant a judgment in favor of the defendant.

A judgment in favor of the plaintiff may:

- order the landlord to repair the condition
- reduce the tenant's rent from the date of the first notice until the condition is repaired
- grant a judgment for actual damages
- grant a judgement for \$500 plus one month's rent as a civil penalty; and
- grant a judgment for court costs and attorney's fees.

AFTER THE TRIAL

Appeal

Once the court has issued a judgment in the case, either party has 21 days to appeal that judgment to the Cooke County Court at Law by filing a *notice of appeal*. Once the notice of appeal is received and approved by the judge, the clerk will transmit the case to the county clerk. The appealing party will be responsible for paying the costs on appeal to the county clerk.

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 action. (TRCP 509.8)