

LANDLORD AND TENANT LAW

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Applicable Landlord and Tenant Law

- Texas Property Code
 - Chapter 24 (Forcible Detainer)
 - Chapter 54 (Landlord's Lien)
 - Chapter 91 (General Provisions)
 - Chapter 92 (Residential Tenancies)
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- Texas Rules of Civil Procedure
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Definitions

Tex. Prop. Code § 92.001

- A “tenant” is a person who is authorized by a lease to occupy a dwelling. Tex. Prop. Code § 92.001(6).
- A “landlord” is the owner, lessor, or sub-lessor of a dwelling. Tex. Prop. Code § 92.001(2).
- A “lease” means any written or oral agreement between a landlord and a tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a dwelling. Tex. Prop. Code § 92.001(3).
- A “dwelling” is classified as one or more rooms rented for use as a permanent residence. Tex. Prop. Code § 92.001(1).

Leases

- **Lease Agreements**
- If a lease is for a term of one year or less, there is no requirement for it to be in writing. Leases for more than one year must be in writing. Tex. Prop. Code § 5.021.

Term of Verbal Leases

- Verbal leases are based upon rent paying periods.
- Notices for termination of such tenancies or rent increases require one rent paying period's notice.

Lease Clauses are Independent

- The clauses contained in a lease agreement are independent. Thus, a tenant is not excused from paying rent if the landlord breaches part of the lease.

Waiver or Expansion of Duties and Remedies

- Texas Property Code § 91.006(b)
- Texas Property Code § 92.006
- *Texas Property Code § 92.355*
- A landlord's duty or tenant's remedy concerning the following may not be waived:
 - Security deposits
 - Security devices
 - Disclosure of ownership and management
 - Utility cutoffs
 - Smoke detectors, except for the landlord's duty of inspection and repair
 - Repairs, except in limited circumstances.
 - *Rental Application provisions (leases after 1/1/08)
- A lease provision that purports to waive a landlord's duty to mitigate damages is void. Texas Property Code § 91.006(b)

* Residential Applications *

- Texas Property Code § 92.331 – § 92.334
- A landlord who in bad faith fails to refund an application deposit in violation of this subchapter is liable for an amount equal to \$100, three times the amount wrongfully retained, and reasonable attorney's fees. Texas Property Code § 92.354.

Condition of Premises

- * A landlord is required to make a diligent effort to repair conditions that:
 - materially affects the health or safety of an ordinary tenant
 - or
 - that arise due to landlord's failure to provide hot water if the tenant gives notice of such condition to the landlord.

The tenant must be current with rent at the time repair notices are given. Tex. Prop. Code § 92.052(a).*

Repair Notice

- A tenant's notice must be in writing only if required to be in writing pursuant to a written lease. Tex. Prop. Code § 92.052(d).

Two Methods of Notice

- A tenant is required to give the landlord a second notice to repair before the landlord is liable unless the first notice was sent to the landlord by certified mail, return receipt requested or by registered mail. Tex. Prop. Code § 92.056(b)(3).

Repair Must be Made within Reasonable Time

- A landlord has a reasonable time to repair the condition. Tex. Prop. Code § 92.056(b)(4).
- There is a rebuttable presumption that 7 days is a reasonable time. Tex. Prop. Code § 92.056(d).

Affidavit for Delay

- A landlord may extend the time period to repair by filing an Affidavit for Delay. Tex. Prop. Code § 92.0562.
- Lack of Parts = 15 days
- Lack of Labor = 30 days

Failure to Repair Remedies

- If a landlord is liable for failing to repair, the tenant may terminate the lease. Tex. Prop. Code § 92.056(e)(1).

Failure to Repair Remedies

- The tenant of a landlord who is liable to the tenant for failing to timely repair may recover actual damages, one month's rent plus \$500, court costs, and attorney's fees. The tenant may also obtain other judicial remedies such as an order that directs the landlord to repair and an order that reduces the rent. Tex. Prop. Code § 92.0563(a).

Waiving Duty to Repair

- These duties may be waived only if the landlord owns only one rental dwelling and under limited circumstances. Tex. Prop. Code § 92.006(e).

Waiving Duty to Repair

- A landlord who knowingly contracts with a tenant to waive the landlord's duty to repair is liable to the tenant for actual damages, one month's rent plus \$2000, and attorney's fees. Tex. Prop. Code § 92.0561(b).

Repair & Deduct Remedy

- A tenant also has a procedure to repair and deduct if certain requirements are met. Rental deductions are limited to \$500 or one month's rent from subsequent rental payments. Tex. Prop. Code § 92.0561.
- However, improperly made deductions could result in eviction of the tenant for non-payment of rent.

Repair Provisions in Lieu of Common Law

- Kammarath v. Bennett – Established the implied warranty of habitability in Texas.
- The duties of a landlord and the remedies of a tenant under the repair section of the Texas Property Code are in lieu of common law remedies. Tex. Prop. Code § 92.061.

Retaliation

- Texas Property Code § 92.331 –§ 92.335
- A landlord may not pursue any eviction action, rent increase, or decrease in services to a tenant within 6 months from a repair request in retaliation for the repair request. Tex. Prop. Code § 92.331(b).
- Retaliation is a separate cause of action. Sims v. Century Kiest Apartments, 567 S.W.2d 526 (Tex. Civ. App – Dallas 1978, no writ).
- Retaliation is also a defense to an eviction action. Tex. Prop. Code § 92.335.
- Damages recoverable by a tenant for retaliation include actual damages, one month's rent plus \$500, court costs, and attorney's fees. Tex. Prop. Code § 92.333

Security Devices

- Texas Property Code § 92.151 – § 92.170
- A landlord is required to install specific types of locks on windows and doors in all rental units. Tex. Prop. Code § 92.153(a).
- Specific installation heights are required for the locking devices. Tex. Prop. Code § 92.154.
- Landlords are required to re-key locks within 7 days from each tenant turnover date. Tex. Prop. Code § 92.156.
- If a landlord fails to install the required security devices after proper notice, a tenant may unilaterally terminate the lease without court proceedings and may file suit against the landlord for actual damages, one month's rent plus \$500, court costs, and attorney's fees. Tex. Prop. Code § 92.165.

Smoke Detectors

- Texas Property § 92.251 - § 92.262
- The landlord is required to install a working smoke detector in rental units at specific designated places at the time of initial renting of a dwelling. Tex. Prop. Code § 92.255.
- During the lease term, a landlord has the duty to inspect and repair a smoke detector, but only if the tenant gives the landlord notice of a malfunction. Tex. Prop. Code § 92.258(c).
- The tenant of a landlord who is liable to the tenant for failing to install or repair a smoke detector may recover actual damages, one month's rent plus \$100, court costs, and attorney fees. The tenant may also terminate the lease or obtain other judicial remedies, such as, an order directing installation. Tex. Prop. Code § 92.260.
- NEW (2010) 92.254 Fire alarm for hearing impaired tenant.

Non-Payment of Rent Issues

- ***Exclusion of the Tenant***
- **Interruption of Utilities (Changing 1/1/10)**
- **Residential Landlord's Lien**
- **Forcible Detainer (Eviction Suits)**

Exclusion of the Tenant

- ***Exclusion of the Tenant*** *Texas Property Code § 92.0081(b)*
- *For leases entered into after 1/1/08: the landlord's right to change the locks because of non-payment must be contained in the lease.*
- If a tenant is delinquent with paying all or part of the rent:
- Landlord may change the lock on the tenant's door in non-payment of rent situation.
- Pre-lockout notice
- Lockout Notice
- Tenant must be given a new key without regard to whether the tenant pays the delinquent rent. Tex. Prop. Code § 92.0081(f).

Lease Provision Required

- *For leases entered into after 1/1/08:
- * the landlord's right to change the locks because of non-payment must be contained in the lease.*

Pre-lockout Notice

- Pre-lockout notice - five days prior (if notice mailed) or three days prior (if notice hand delivered or posted on the inside of tenant's main entry door).
 - must inform tenant of the earliest date of the proposed lockout, the amount of rent the tenant must pay to avoid the lockout, and the name and address of where the rent may be paid. Tex. Prop. Code § 92.0081(d)(2).
 - the pre-lockout notice must contain in underlined or bold print the tenant's right to receive a key to the new lock at any hour regardless of whether the tenant pays the delinquent rent. (Effective for leases entered into 1/1/08 or later)

Lockout Notice

- Lockout Notice - on tenant's front door stating that tenant may obtain a new key, regardless of whether or not the tenant pays the delinquent rent. The notice must state the on-site location where a tenant may go to pick up a new key 24 hours a day or a telephone number that the tenant may call to have a key delivered to tenant within 2 hours. Tex. Prop. Code § 92.0081(c)(1).

Tenant must be given new key

- Tenant must be given a new key without regard to whether the tenant pays the delinquent rent. Tex. Prop. Code § 92.0081(f).
- If a landlord refuses to provide a tenant with a new key, the landlord is liable for an additional civil penalty of one month's rent. Tex. Prop. Code § 92.0081(i).

Remedy for Unlawful Lockout

- A tenant in an unlawful exclusion situation may recover possession or terminate the lease. The tenant may also recover actual damages, one month's rent plus \$1000, court costs, and attorney fees. Tex. Prop. Code § 92.0081(h).
 - Note: For leases entered into prior to 1/1/08, the statutory penalty was one month's rent plus \$500

Prohibited Acts

Texas Property Code § 92.0081(a)

- A landlord is prohibited from removing doors, windows, locks, doorknobs, furniture, fixtures, or appliances furnished by the landlord unless the removal is for repair or replacement. Tex. Prop. Code § 92.0081(a).
- A tenant in such a removal of property situation may recover possession or terminate the lease. The tenant may also recover actual damages, one month's rent plus \$1000, court costs, and attorney's fees. Tex. Prop. Code § 92.0081(h).

Tenant's Right of Reentry

- Texas Property Code § 92.009
- A tenant who is unlawfully locked out by a landlord is entitled to an immediate right of reentry to the premises by obtaining a writ of reentry from the justice court in the precinct where the property is located.

Interruption of Utilities

- Texas Property Code § 92.008
- A landlord may cut off electrical service provided to a tenant as an incident of the lease agreement under certain circumstances involving non-payment of rent.
 - (Repealed effective 1/1/10)
- Water, wastewater, and gas service may not be interrupted, except for repair service.
- A tenant in an unlawful utility disconnection situation may recover possession or terminate the lease. The tenant may also recover actual damages, one month's rent or \$500 (whichever is greater), court costs, and attorney's fees.

WRIT OF RESTORATION OF UTILITY SERVICE

- NEW: Effective 1/1/10
- Texas Property Code § 92.0091
- A tenant who is unlawfully denied electric service by a landlord is entitled to an immediate right of restoration of electrical services to the premises by obtaining a writ of restoration of utility service from the justice court in the precinct where the property is located.

Residential Landlord's Lien

- Texas Property Code § 54.041 - § 51.048
- A landlord has a lien for unpaid rent that is due. The lien attaches to nonexempt property that is in the residence or stored in a storage room. Tex. Prop. Code § 54.041.
- Specific property listed in Section 54.041 of the Texas Property Code is exempt from the landlord's lien. This list is different from the general personal property exemption list set out in Section 42.002 of the Texas Property Code.
- A contractual landlord's lien is not enforceable unless it is underlined or printed in conspicuous bold print in the lease agreement. Tex. Prop. Code § 54.043(a).
- If authorized by a written lease, a landlord may seize nonexempt property if it can be accomplished without a breach of the peace. A landlord who seizes property must leave a written notice containing an itemized list of the items taken, the amount of delinquent rent, who to contact regarding the amount owed, and must state that the property will be returned upon payment of the delinquent rent. Tex. Prop. Code § 54.044.

Forcible Detainer (Eviction Suits)

- Texas Property Code § 24.002
- Texas Rules of Civil Procedure Rules 738 –753

Notice to Vacate

- Texas Property Code § 24.005
- Texas Property Code § 91.001
- The required length of time to vacate is set out by the Texas Property Code or by the written lease agreement.

Citation/Service of Citation

- TRCP Rule 739, 742
- * Texas Property Code 24.0051*
- Service of citation may be made on the tenant or anyone over the age of 16 at the dwelling.
- *Citation must include a specific notice contained in the citation about obtaining a lawyer or free legal assistance.

Timing of Trial

- TRCP Rule 739
- Trial is to be conducted not less than 6 days or more than 10 days from the date of service.

Jury Trial

- TRCP Rule 744
- Upon making a jury demand and paying the required fee on or before five days from the date the defendant is served, a trial by jury may be demanded.

Jurisdiction

- Texas Government Code § 27.031(a)(2)
- Exclusive original jurisdiction in forcible detainer cases is in justice court.

Venue

- Texas Property Code § 24.004
- Proper venue in a forcible detainer suit is in the county and precinct where the property is located.

Possession Bond

- Texas Rules of Civil Procedure Rule 740
- This section establishes a procedure where the landlord may post a bond to obtain possession of the property within 6 days from the date the tenant receives notice of the filing of the possession bond. A tenant may post a counter-bond or demand a trial within 6 days in response to the landlord's possession bond.

Limitation of Issue

- TRCP Rule 738
- TRCP Rule 746
- The only issue in a forcible detainer suit is the right of possession, except a suit for delinquent rent may be added.
- * Justice Court jurisdiction maximum is \$10,000.

Appeal

- TRCP Rule 749
Texas Property Code § 24.007
- Within 5 days after the date the judgment is signed, a party may appeal the judgment by filing an appeal bond in an amount set by the justice of the peace.
- If day 5 falls on a Saturday, Sunday, or legal holiday, the appealing party's time to appeal is extended until the next day that the court is open for normal business.
- The justice court judgment will become final if not appealed within the prescribed time set forth above.
- A party unable to afford an appeal bond may appeal by filing an affidavit of inability. TRCP Rule 749.
- To remain in possession of the premises during the appeal process, a tenant who appeals a non-payment of rent eviction by filing an affidavit of inability must post one month's rent into the justice court registry within 5 days of filing the affidavit. Additionally, a tenant in this situation must pay future rent as it becomes due each month to the County Court registry. TRCP Rule 749b.
- Limited one time cure right if payment to Court missed while appealing with pauper's affidavit. Texas Property Code § 24.0054
- If an eviction case is appealed, a trail de novo (new trial) will be conducted at the county court.
- A defendant who has not filed a written answer at justice court must file a written answer in the county court within 8 days or default judgment may be taken. TRCP Rule 753

Writ of Possession

- Texas Property Code § 24.0061
- TRCP 748
- TRCP 755

- A writ of possession may not be issued earlier than the sixth day from the date of judgment. TRCP Rule 748.
- The writ of possession directs the constable to instruct the tenant to leave the premises. If the tenant does not move, the writ authorizes the constable to hire a warehouseman to remove the property from the premises. Tex. Prop. Code § 24.0061(e).
- A constable must give a tenant notice at least 24 hours before executing the writ. Tex. Prop. Code § 24.0061(d)(1).

Warehouseman's Lien

Texas Property Code § 24.0062

- A warehouseman has a lien on the property seized for moving and storage charges. Tex. Prop. Code § 24.0062(a).
- The warehouseman's lien attaches once the property is stored in the warehouse. Tex. Prop. Code § 24.0062(a).
- The tenant may redeem all property by paying all the moving and storage charges. Tex. Prop. Code § 24.0062(e).
- During the first 30 days of storage, the tenant may demand specific individual items by paying the moving and storage charges reasonably attributable to the items being redeemed. Tex. Prop. Code § 24.0062(e).
- A warehouseman may not recover any moving or storage charges if the court determines that the warehouseman's moving or storage charges are not reasonable. Tex. Prop. Code § 24.0062(h).

Security Deposits

- Texas Property Code § 92.101 - § 92.109
- A landlord is required to refund a security deposit or provide an itemized list of deductions within 30 days after a tenant moves out and provides a forwarding address. Tex. Prop. Code § 92.103(a). Tex. Prop. Code § 92.107(a).
- The tenant does not have to provide a written notice of move out as a condition for return of a security deposit unless a written lease with the provision underlined or in bold requires the tenant to do so. Tex. Prop. Code § 92.103(b).
- A landlord who does not comply with the requirements for the return of a security deposit is presumed to be in bad faith. Tex. Prop. Code § 92.108(b).
- If a landlord is found to have withheld a security deposit in bad faith, a tenant may recover a \$100 statutory penalty, three times the amount of deposit wrongfully withheld, court cost, and attorney's fees. Tex. Prop. Code § 92.109(a).
- If a landlord fails to give an itemization, he waives right to claim damages to the apartment.

Landlord's Liability to Tenant for Utility Cutoff

Texas Property Code § 92.301

- If the utility company because of non-payment by the landlord disconnects utility service that a landlord has agreed to furnish to a tenant in the lease, the tenant may pay the utility company to avert the cutoff and deduct the amounts from the tenant's rent, terminate the lease, and recover actual damages, (including but not limited to moving costs, utility connection fees, storage fees, and lost wages from work), court costs, and attorney's fees.

Subletting Prohibited

- Texas Property Code § 91.005
- A tenant may not rent the leasehold to any other person without the prior consent of the landlord.

Disclosure of Ownership and Management

- Texas Property Code § 92.201 - § 92.205
- A landlord must disclose information about the ownership of the property. Failure to disclose information, or correct information, subjects the landlord to ordered disclosure, tenant's actual cost in discovering the information, one month's rent plus \$100, court costs, attorney's fees, and unilateral termination of the lease without a court proceeding. Tex. Prop. Code § 92.205(a).

Occupancy Limits

Texas Property Code § 92.010

- The maximum number of adult tenants that may occupy a dwelling is three times the number of bedrooms in the dwelling. Tex. Prop. Code § 92.010(a).
- A landlord may allow an occupancy rate of more than three adults per bedroom to the extent the landlord is required by state or fair housing law to allow a higher occupancy rate or in situations where the occupant causing the violation is seeking temporary (up to one month) sanctuary from family violence. Tex. Prop. Code § 92.010(b).

Tenant Liens - Landlord Breach of Lease

- **Tenant Liens - Landlord Breach of Lease**
- Texas Property Code § 91.004
- If a landlord of a tenant who is not in default under a lease fails to comply in any respect with the lease agreement, the landlord is liable to the tenant for damages resulting from the failure. Tex. Prop. Code § 91.004(a).
- To secure payment of the damages, the tenant has a lien on the landlord's non-exempt property in the tenant's possession and on the rent due to the landlord under the lease. Tex. Prop. Code § 91.004(b).

Landlord's Duty to Mitigate Damages

- Texas Property Code § 91.006
- A landlord has a duty to mitigate damages if a tenant abandons the leased premises in violation of the lease. Texas Property Code § 91.006(a).

TENANT'S RIGHT TO TERMINATE EARLY

- A tenant may terminate a lease prior to the expiration of the lease term in limited situations:
 - 1. Military Service. Tex. Prop. Code § 92.017
 - 2. Family Violence. Tex. Property Code § 92.016
 - 3. Sexual Offenses. Tex. Prop. Code § 92.0161
 - NEW: Effective - January 1, 2010.

GUARANTOR LIABILITY

- NEW: Effective – January 1, 2010
- Tex. Prop. Code § 92.021
- Holds guarantor of a lease liable only for the original term of the lease, unless the guarantor agrees to guarantee any renewals of the lease.

Manufactured Homes

- Texas Property Code § 94.001 - § 94.303
- “Manufactured Home Community” – 4 or more lots offered for lease to place manufactured homes. § 94.001(4).
- Landlords of manufactured housing facilities must offer an initial lease term of at least 6 months to tenants. Tex. Prop. Code § 94.052(a).

Texas Fair Housing Act

- Texas Property Code § 301.001- § 301.171
- A landlord may not refuse to rent to a tenant because of race, color, religion, sex, familial status, national origin, or disability. Tex. Prop. Code § 301.021-025