

Repair and Remedy Suit under Rule 509



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a. Differences in Manufactured Home Tenancy Repair Cases

Rule 509 **only** applies to a repair and remedy case brought under Chapter 92 (residential tenancies), and not to a case brought under Chapter 94 (specific to manufactured home tenancies). *Rule 509.1.*

So a tenant in a manufactured home tenancy would need to file a regular small claims suit rather than a Rule 509 Repair and Remedy case.

In a manufactured home case a justice of the peace may **not order the landlord to take reasonable action to repair or remedy the condition**. *Property Code § 94.159(c)*. Only a **county or district court** may make such an order in a manufactured home case. *Property Code § 94.159(c)*.

b. Available Remedies in a Repair and Remedy Suit

A tenant's judicial remedies against a landlord who is liable under Section 92.056 include:

- An order directing the landlord to take reasonable action to repair or remedy the condition;
- An order reducing the tenant's rent from the date of the first repair notice until the condition is repaired or remedied in proportion to the reduced rental value resulting from the condition;
- 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 the tenant's actual damages; **and**
- Court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

Property Code § 92.0563(a).

Justice courts have jurisdiction in actions to enforce tenant's judicial remedies, including ordering a landlord to take reasonable action to repair or remedy a condition that materially affects the physical health or safety of an ordinary tenant under Subchapter B of Chapter 92. *Property Code § 92.0563(c)*.

A justice court **may not** award a judgment – including an order of repair – that exceeds \$10,000, excluding interests and court costs. *Property Code § 92.0563(e)*.



KEY
POINT

Note that the justice court's jurisdiction will increase to \$20,000 effective September 1st, 2020. However, Sec. 92.0563(e) of the Property Code **was not** amended to include the increase, so repair and remedy cases **will still be limited to \$10,000**.

c. Contents of the Petition

A repair and remedy suit begins by the filing of a written petition with the court. The petition must include the following:

- The street address of the residential rental property;
- A statement indicating whether the tenant has received in writing the name and business address of the landlord and landlord's management company;
- To the extent known, 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 residential rental property;
- Information concerning any notices the tenant gave to 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 the rent was current or had been timely tendered at the time notice was given;
- A description of the property condition materially affecting the health or safety of an ordinary tenant that the tenant seeks to have repaired or remedied;
- A statement of the relief requested by the tenant, including an order to repair or remedy a condition, a reduction in rent, actual damages, civil penalties, attorney's fees, and court costs;
- If the petition includes a request to reduce the rent, the amount of rent paid by the tenant, 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
- The tenant's name, address and telephone number.

Rule 509.2(a).

The tenant must provide the court with copies of the petition and any attachments for service on the landlord. *Rule 509.2(b).*

A petition substantially in the form issued by the Supreme Court is sufficient. A suit may not be dismissed due to a defect in the petition unless the tenant is given an opportunity to correct the defect and does not promptly correct it. *Rule 509.2(c).*

d. Citation and Appearance Date

After the petition is filed the judge must immediately issue a citation directed to the landlord and commanding him to appear before the judge not less than **ten days** nor more than **21 days** after the petition is filed. *Rule 509.3.*

The appearance date is the trial date. The landlord may, but is not required to, file an answer before the appearance date. *Rule 509.3.*

e. Service of the Citation

The citation may be served by a sheriff, constable or “other person authorized by Rule 501.2,” (a private process server or other person authorized by the court), by delivering it to the landlord at least **six days before** the appearance date. The citation “must be issued, served, and returned in like manner as ordinary citations from a justice court.” *Rule 509.4(a).*

Alternative Service - First Alternative Method

If the petition does not include the landlord’s name and business street address, or if the person serving the citation is unable to serve it successfully by delivering it to the landlord after making diligent efforts on at least two occasions, then the person serving the citation must serve it by delivering a copy of it, along with the petition and any attachments, to:

- The landlord’s management company if the tenant has received written notice of the name and business street address of the landlord’s management company; or
- The landlord’s authorized agent for service of process, which may be the landlord’s management company, on-premises manager or rent collector serving the residential property.

Rule 509.4(b)(1).

Alternative Service - Second Alternative Method



If the person serving the citation is unable to serve it successfully by delivering it to the landlord's management company or authorized agent, after making diligent efforts on at least two occasions, then he must execute and file in the justice court a sworn statement:

- Stating that he made diligent efforts to serve the citation on at least two occasions at all available business street addresses of the landlord and on the landlord's management company, on premises manager and rent collector; **and**
- Providing the times, dates and places of each attempted service.

Rule 509.4(b)(2).

The judge may then authorize the person to serve the citation by:

- Delivering a copy of the citation, petition and any attachments to someone over the age of 16 at any business street address listed in the petition, OR if no one answers the door at a business street address:
 - Placing the citation, petition and attachments through a door mail chute or under the front door; **or**
 - Affixing them to the front door or main entry to the business street address;
- Within 24 hours of delivery to the premises, mailing a copy of the citation, petition and attachments to the landlord at the landlord's business street address by first class mail; and
- Noting on the return of citation the date of delivery to the premises and the date of mailing.

Rule 509.4(b)(2).

The delivery and mailing to the business street address must occur **at least six days** before the appearance date. At least **one day before the appearance date**, a return of service must be filed with the court that issued the citation. It is not necessary for the tenant to request any of the alternative service methods authorized by Rule 509.4. *Rule 509.4(b)(2).*

f. Representation of Parties



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Parties may represent themselves or be represented by an attorney. Unlike an eviction case, a party may not be represented by an authorized agent. *Rule 500.4.*

g. Trial

A repair and remedy case “must be docketed and tried as other cases.” *Rule 509.5(a).* And the rules expressly provide that the “judge may develop the facts of the case in order to ensure justice.” *Rule 509.5(a).*

If the tenant appears at trial and the landlord has been served and fails to appear at trial, the justice may proceed to hear the evidence. And if the tenant establishes that he is entitled to recover, the

judge must render judgment against the landlord in accordance with the evidence. *Rule 509.5(b)*. On the other hand, if the tenant fails to appear for trial, the judge may dismiss the suit. *Rule 509.5(b)*.

A party may file a motion for a continuance of the trial of a repair and remedy case under Rule 503.3(b) and the judge “for good cause, may postpone the trial for a reasonable time.”

Burden of Proof

The **tenant** generally has the burden of proof. This means that the tenant has to prove that the landlord **did not** make a diligent effort to repair or remedy a condition (that the landlord had a **duty** to repair) in a **reasonable** amount of time from receiving notice.

But the burden of proof moves to the **landlord** and he has to prove that he **did** make a diligent effort to repair in a reasonable time (or that a reasonable time for repair has not elapsed) **if**:

- the landlord received a written demand from the tenant for an explanation for delay in performing a duty to repair or remedy a condition; **and**
- the landlord did not provide the written explanation for delay on or before the 5th day after receiving the demand.

Property Code § 92.053.

h. Judgment

A judgment may be rendered against the landlord for failure to repair or remedy a condition at the residential rental property **if the total judgment does not exceed \$10,000** (excluding interest and court costs but including attorney’s fees). *Property Code § 92.0563(e); Rule 509.6(a)*.

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Attorney’s Fees and Court Costs

A party who prevails in a repair and remedy suit may recover the party’s court costs and reasonable attorney’s fees as allowed by law. *Rule 509.6(a)*.

Contents of Judgment

The judgment must be in writing, signed and dated, and must include the names of the parties and the street address of the residential rental property where the condition is to be repaired or remedied. *Rule 509.6(b)(1)*.

The judgment may:

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

- order a reduction in the tenant's 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 or remedied;
- award a civil penalty of one month's rent plus \$500;
- award the tenant's actual damages; **and**
- award court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

Rule 509.6(b)(2).



If the judge orders the landlord to repair or remedy a condition, the judgment must include **in reasonable detail**:

- the actions the landlord must take to repair or remedy the condition; **and**
- the date when the repair or remedy must be completed.

Rule 509.6(b)(3).

If the justice orders a reduction in the tenant's rent, the judgment must state:

- the amount of the rent the tenant must pay, if any;
- the frequency with which the tenant must pay the rent;
- the condition justifying the reduction of rent;
- the effective date of the order reducing rent;
- that the order reducing rent will terminate on the date the condition is repaired or remedied; **and**
- that on the day the condition is repaired or remedied, the landlord must give the tenant written notice, served in accordance with Rule 501.4, that the condition justifying the reduction of rent has been repaired or remedied and the rent will revert to the rent amount specified in the lease.

Rule 509.6(b)(4).

Service of Judgment on Landlord

The judgment may be served on the landlord in open court or by any means provided in Rule 501.4 at:

- An address listed in the citation:
- The address listed on any answer; **or**
- Such other address as the landlord provides to the court in writing.

Unless the judge serves the landlord in open court or as provided in Rule 501.4, the sheriff, constable, or other authorized person who serves the landlord must **promptly file a certificate of service** in the justice court. *Rule 509.6(c)*.

Landlord's Failure to Comply with Order to Repair or Order Reducing Rent

If the landlord fails to comply with an order to repair or remedy a condition or reduce the tenant's rent, it is grounds for citing the landlord for contempt of court under Government Code § 21.002. *Rule 509.6(d)*.

i. No Counterclaims



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Counterclaims and suits against third parties are not permitted in repair and remedy cases. A compulsory counterclaim may be brought in a separate suit and any potential causes of action, including a compulsory counterclaim, that are not asserted because of this rule are not precluded. *Rule 509.7*.

j. Appeal

Either party 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. *Rule 509.8(a)*. If the judgment is amended in any respect, any party has the right to appeal **within 21 days** after the date the judge signs the new judgment in the same manner as an appeal of an original judgment. *Rule 509.8(a)*.



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No Appeal Bond

An appeal bond is **not** required in a repair and remedy case. *Rule 509.8(b)*. Instead, the appeal is considered perfected with the filing of a notice of appeal. *Rule 509.8(b); Property Code § 92.0563(f)*.

Judgment May Not Be Enforced

The timely filing of a notice of appeal stays (stops) the enforcement of any order to repair or remedy a condition or reduce the tenant's rent, as well as any other actions. *Rule 509.8(c)*.

Filing Fee in County Court Must Be Paid To Maintain Perfected Appeal

The appellant must pay the costs on appeal to a county court in accordance with Rule 143a. *Rule 509.8(d)*. This means that if they do not pay the county court filing fee, their appeal will be deemed not perfected and the justice court judgment will be valid again.

Trial de Novo

The appeal is by **trial de novo**. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. An appeal of a judgment of a justice court takes precedence in the county court and may be held at any time after the eighth day after the date the transcript is filed in the county court. *Rule 509.8(e); Property Code § 92.0563(f)*.

k. Effect of Judgment for Possession in Eviction Case on Repair and Remedy Order

If the landlord is awarded a final judgment for possession of the residential rental property, any order to repair or remedy a condition is vacated and unenforceable. *Rule 509.9*.

Writ of Possession is Not Required to Stay Repair Order

Note that a judgment for possession is **not** the same thing as a writ of possession, which may only be requested after a judgment has been entered.

Judgment for Possession Does Not Affect Orders Other than Repair and Remedy Orders

Also note that all other orders in the judgment, such as orders reducing previous rent due, or awarding monetary amounts to the tenant, are not affected by a judgment for possession.