

LANDLORD-TENANT

H.B. No. 177
EFFECTIVE 09/01/07

AN ACT

Relating to provision of hot water service to residential rental units.

SECTION 1. Section 92.052(a), PC, amended

- (a) A **landlord shall make a diligent effort** to repair or remedy a condition if:
- (1) the **tenant specifies the condition in a notice** to the person to whom or to the place where rent is normally paid;
 - (2) the tenant **is not delinquent in the payment of rent** at the time notice is given; and
 - (3) the condition:
 - (A) **materially affects the physical health or safety of an ordinary tenant; or**
 - (B) **arises from the landlord's failure to provide and maintain in good operating condition a device to supply hot water of a minimum temperature of 120 degrees Fahrenheit.**

S.B. No. 1483
EFFECTIVE 09/01/07

AN ACT

Relating to eviction suits in justice courts.

- (d) In a suit described by Subsection (c), the citation required by Rule 739, Texas Rules of Civil Procedure, **must include the following notice** to the defendant on the first page of the citation in **English and Spanish** and in **conspicuous bold print**:

SUIT TO EVICT

THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE.

AN ACT

Relating to a residential tenant's rights and remedies.

SECTION 1. Section 92.0081, PC, by amending Subsections (b), (d) and (h) and adding (e-1), (k) and (I)

(b) A **landlord may not intentionally prevent a tenant from entering** the leased premises except by judicial process unless the exclusion results from:

- (1) bona fide repairs, construction, or an emergency;
- (2) removing the contents of premises abandoned by a tenant; or
- (3) Changing the door locks **on the door to the tenant's individual unit** of a tenant who is delinquent in paying at least part of the rent.

(d) A **landlord may not intentionally prevent a tenant from entering the leased premises** under Subsection (b)(3) unless:

- (1) **the landlords right to change the locks because of a tenant's failure to timely pay rent is placed in the lease;**
- (2) the tenant is **delinquent in paying all or part of the rent;** and
- (3) the **landlord has locally mailed not later than the fifth calendar day before the date on which the door locks are changed** or hand-delivered to the tenant or **posted on the inside of the main entry door** of the tenant's dwelling **not later than the third calendar day before the date on which the door locks are changed a written notice stating:**
 - (A) the **earliest date that the landlord proposes to change the door locks;**
 - (B) the **amount of rent the tenant must pay to prevent changing** of the door locks;
 - (C) the **name and street address of the individual to whom,** or the **location of the on-site management office** at which, the **delinquent rent may be discussed or paid** during the landlord's normal business hours; **and**
 - (D) **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.**
- (e-1) **A landlord who changes the locks or otherwise prevents a tenant from entering the tenant's individual rental unit may not change the locks or otherwise prevent a tenant from entering a common area of residential rental property.**
- (h) If **a landlord violates this section,** the tenant may:

- (1) either recover possession of the premises or terminate the lease; and
- (2) recover from the landlord a civil penalty of one month's rent plus \$1,000 [~~\$500~~], actual damages, court costs, and reasonable attorney's fees in an action to recover property damages, actual expenses, or civil penalties, less any delinquent rent or other sums for which the tenant is liable to the landlord.
- (k) A landlord may not change the locks on the door of a tenant's Dwelling under Subsection (b) (3):
 - (1) when the tenant or any other legal occupant is in the dwelling; or
 - (2) more than once during a rental payment period.
- (I) This section does not affect the ability of a landlord to pursue other available remedies, including the remedies provided by chapter 24.

SECTION 2. Section 92.0131, PC, amended by adding:

(c-1) As a precondition for allowing a tenant to park in a specific parking space or a common parking area that the landlord has made available for tenant use, the landlord may require a tenant to provide only the make, model, color, year, license number, and state of registration of the vehicle to be parked.

SECTION 3. Subchapter A, Chapter 92, PC. Amended by adding

Sec. 92.019. **LATE PAYMENT OF RENT; FEES.**

- (a) A landlord may not charge a tenant a late fee for failing to pay rent unless: a
 - (1) notice of the fee is included in a written lease;
 - (2) the fee is a reasonable estimate of uncertain damages to the landlord that are incapable of precise calculation and result from late payment of rent; and
 - (3) the rent remains unpaid after the second day after the date the rent was originally due.
- (b) A late fee under this section may include an initial fee and a daily fee for each day the rent continues to remain unpaid.
- (c) A landlord who violates this section is liable to the tenant for an amount equal to the sum of \$100.,+ three times the amount of the late fee charged in violation of this section, and the tenant's reasonable attorney's fees.
- (d) A provision of a lease the purports to waive a right or exempt a party from a liability or duty under this section is VOID.
- (e) This section relates only to a fee, charge, or other sum of money required to be paid under the lease if rent is not paid as provided by Subsection (a) (3), and does not affect the landlord's right to terminate the lease or take other action permitted by the lease or other law. Payment of the fee, charge, or other sum of money by a tenant does not waive the right or remedies provided by this section.

SECTION 4. Subchapter A, Chapter 92, PC. Amended by adding;

Sec. 92.020. **EMERGENCY PHONE NUMBER.**

(a) A landlord that has an on-site management or superintendent's office for residential rental property must provide to a tenant a **telephone number that will be answered 24 hours a day** for the purpose of reporting emergencies related to a condition of the leased premises that materially affects the physical health or safety of an ordinary tenant.

(b) The **landlord must post the phone number** required by Subsection (a) prominently outside the management or superintendent's office.

(c) This section does not apply to or affect a local ordinance governing a landlord's obligation to provide a 24-hour emergency contact number to a tenant that is adopted before January 1, 2008, if the ordinance conforms with or is amended to conform with this section.

(d) A **landlord to whom Subsection (a) does not apply must provide to a tenant a telephone number for the purpose of reporting emergencies** described by that subsection.

SECTION 5. Section 92.056, PC. Amended by adding Subsection:

(g) A **lease must contain language in underlined or bold print** that informs the tenant of the remedies available under this section and Section 92.0561.

SECTION 6. The heading to Subchapter 1, Chapter 92, PC. Amended to read:

SUBCHAPTER 1. **RENTAL APPLICATION**

Section 7. section 92.351, PC amended by adding Subdivisions (1-a) and (5-a)

(1-a) "**Application fee**" means a nonrefundable sum of money that is given to the landlord to offset the costs of screening an applicant for acceptance as a tenant.

(5-a) "**Rental application**" means a written request made by an applicant to a landlord to lease premises from the landlord.

SECTION 8. Subchapter 1, Chapter 92, PC. Amended by adding;

Sec. 92.3515. **NOTICE OF ELIGIBILITY REQUIREMENTS.**

(a) **At the time an applicant is provided with a rental application, the landlord shall make available to the applicant printed notice of the landlord's tenant selection criteria and the grounds for which the rental application may be denied, including the applicant's:**

- (1) criminal history;
- (2) previous rental history;
- (3) current income;
- (4) credit history; or
- (5) **failure to provide accurate or complete information on the application form.**

- (b) If the landlord makes the notice available under Subsection (a) the applicant shall sign an acknowledgement indicating the notice was made available. If the acknowledgment is not signed, there is a rebuttable presumption that the notice was not made available to the applicant.
- (c) The acknowledgment required by Subsection (b) must include a statement substantively equivalent to the following; “signing this acknowledgment indicates that you have had the opportunity to review the landlord’s tenant selection criteria. The tenant selection criteria may include factors such as criminal history, credit history, current income, and rental history. If you do not meet the selection criteria, or if you provide inaccurate or incomplete information, your application may be rejected and your application fee will not be refunded.”
- (d) The acknowledgment may be part of the rental application if the notice is underlined or in bold print.
- (e) If the landlord rejects an applicant and the landlord has not made the notice required by Subsection (a) available, the landlord shall return the application fee and any application deposit.
- (f) If an applicant requests a landlord to mail a refund of the applicant’s application fee to the applicant’s, the landlord shall mail the refund check to the applicant at the address furnished by the applicant.

SECTION 9. Section 92.354, PC amended;

LIABILITY OF LANDLORD.

A landlord who in bad faith fails to refund an application **fee or deposit** in violation of this subchapter is liable for an amount equal to the **sum of \$100, three times the amount wrongfully retained,** and the **applicant’s reasonable attorney’s fees.**

SECTION 10. Subchapter 1, Chapter 92, PC amended by adding;

Section 92.355. WAIVER. A provision of a rental application that purports to **waive a right or exempt** a party from a liability or duty under this subchapter **is VOID.**

SUCTION 11. This act applies only to a lease agreement or a renewal of a lease agreement entered into, or a rental application received by an applicant, on or after the effective date of this Act.

WHAT TO BRING TO COURT

The court requests plaintiff to enclose with this complaint the following:

- (a) A copy (not the original) of plaintiff's **notice to vacate;**
- (b) A copy (not the original) of any **written rental agreement;**
- (c) A copy (not the original) of the **rental application of defendant**(s) is also attached **if the application relates to grounds for eviction,** and
- (d) Rental **receipt log,** on Defendant

Cause No _____

Plaintiff: **John Doe** _____

In the Justice Court, Precinct Two

Vs.

Defendant(s): **Jane Doe** _____

County of El Paso, Texas

(And All Occupants)

EVICTON COMPLAINT

- 1. COMPLAINT. Plaintiff files this complaint against the above defendant(s) to evict defendant(s) from plaintiff's premises, which is located in the above precinct and which is described below.

1111 Any Where

Street address or other description, in Rear, Unit No. **01** (if any)

El Paso, El Paso, TX 79924

City

County

State

Zip

- 2. SERVICE OF CITATION. Plaintiff requests service of citation on defendant(s) by personal service at the above-described premises or by alternative service, if necessary. Any work addresses or other addresses of defendant(s) known to plaintiff are as follows _____

2222 Some Where St. El Paso, El Paso, TX 79904

- 3. TYPE OF OCCUPANCY BY DEFENDANT (S). (*Check as applicable*)

- Occupancy under a rental agreement (lease), as follows;
 - Defendant(s) are occupying the premises under a written or oral rental agreement, either as tenants or as permitted occupants under the rental agreement. The rental agreement does does not involve land that has been rented to defendant(s) for placement of a manufactured home owned by defendant(s).
 - Occupancy after foreclosure: Defendant(s) continue to occupy the premises after foreclosure sale.
 - Occupancy under an executory purchase contract (contract for deed): Defendant(s) continue to occupy the premises after a default under an executory contract for the purchase of the property.
 - Occupancy as a trespasser: Defendant(s) entered the premises without authority or invitation by plaintiff or by any tenant of plaintiff.
 - Occupancy under other circumstances: (*briefly describe*) _____

- 4. MILITARY SERVICE. The above name occupant

- Is not in the military service on active duty, and is not a dependant of a servicemember on active duty
- Is in the military service on active duty
- I have been unable to determine whether or not the defendant is in the military service on active duty
- Has waived his/her rights under the Servicemembers Civil Relief Act of 2003

A person who makes or uses an affidavit knowing it to be false, shall be fined and imprisoned as provided in Title 18 United States Code.

- 5. ADDITIONAL INFORMATION IF MANUFACTURED HOME LOT. If the rental agreement is for the rental of land on which a manufactured home has been placed by the defendant(s), plaintiff has complied with all notice and time requirements in Section 94.203, Texas Property Code. The name(s) and address (es) of all lien holders on the manufactured home are:

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6. NOTICE TO VACATE. Plaintiff delivered to defendant(s) a written notice to vacate in accordance with the applicable notice requirements of Section 24.005 or Section 24.006, Texas Property Code; or, if the land or lot was rented for occupancy by a manufactured home not owned by plaintiff, notice to vacate was delivered under Section 94.203, Texas Property Code.

Notice to vacate was delivered on the 10th day of July, 2009 by the following method: (*check one or more of the following, as applicable*) personal delivery to defendant(s); personal delivery to any person residing at the premises who is 16 years of age or older; affixing the notice to the inside of the main entry door of the premises; regular mail, registered mail or certified mail return receipt requested, to the premises; or other method of delivery authorized under Section 24.005, Texas Property Code.

7. DEFENDANT (S) FAILED TO VACATE. After delivery of the above notice, defendant(s) refused to vacate the premises.

8. GROUNDS FOR EVICTION. The ground or grounds for eviction are as follows: (*check one or more as applicable*)

- Non-payment of rent
- Non-payment of utilities or other sums
- Holding over under rental agreement
- Holding over after foreclosure
- Holding over after termination of executory purchase contract
- Conduct in violation of rental agreement
- Property damage
- Trespass
- Other grounds

(*Check and fill in information as applicable*)

IF EVICTION IS FOR NON-PAYMENT OF RENT: Defendant(s) have failed to pay the rent for the period beginning July 1st, 2009. The total unpaid rent to time of filing this eviction complaint is \$600.00. The rent is \$500.00 per month week or other rental period (*describe period*) June, 2009. The most recent rental due date prior to filing this eviction complaint was July 1st, 2009.

IF EVICTION IS FOR NON-PAYMENT OF UTILITIES OR OTHER SUMS: Defendant(s) have failed to pay the following non-rent amounts (*Describe amount and nature.*) Electric Bill \$50.00, Water Bill \$25.00, Late Fee \$25.00

IF EVICTION IS FOR HOLDING OVER UNDER RENTAL AGREEMENT: Defendant(s) are unlawfully holding over (*check one*) after the rental term or renewal period has expired or after the rental agreement or right of possession was lawfully terminated by plaintiff for violation of the rental agreement by defendant(s). The date of such expiration or termination was _____, 20____.

IF EVICTION IS FOR HOLDING OVER AFTER FORECLOSURE: Defendants are unlawfully holding over after foreclosure of a prior lien. Plaintiff owns the premises as a result of purchase at a tax foreclosure sale or a trustee's foreclosure sale under a superior lien. Defendant(s) have refused to vacate after notice from plaintiff. Plaintiff has complied with all other requirements of Section 24.005(b) and Chapter 51, Texas Property Code, and other applicable laws. (*State facts briefly.*) _____

IF EVICTION IS FOR HOLDING OVER AFTER TERMINATION OF EXECUTORY PURCHASE CONTRACT (CONTRACT FOR DEED): Plaintiff is the seller in an executory purchase contract (contract for deed). Defendant(s) have defaulted under such contract, the contract has been terminated and defendant(s) have refused to vacate after notice from plaintiff. Plaintiff has complied with all statutory and contractual procedures required to regain possession of the premises from defendant(s), including those in Sections 5.063-5.065, Texas Property Code. (State facts briefly.) _____

IF EVICTION IS FOR CONDUCT IN VIOLATION OF RENTAL AGREEMENT: The conduct requirements of the rental agreement have been violated by defendant(s) or other persons for whom defendant(s) are responsible. (State facts briefly.) _____

IF EVICTION IS FOR PROPERTY DAMAGE: Defendant has caused substantial property damage to the premises. (State facts briefly.) _____

IF EVICTION IS FOR TRESPASS: (**check as applicable**) Plaintiff is entitled to possession of the premises because defendant(s) are trespassers, having entered onto the premises without authority of the property owner, tenant, or contract for deed holder. The premises are either owned by plaintiff, leased by the owner to plaintiff or under contract for deed to plaintiff. Defendant(s) have refused to vacate after notice to vacate.

IF EVICTION IS FOR OTHER GROUNDS: (State facts briefly.) _____

9. JUDGMENT REQUESTED. Plaintiff requests judgment for plaintiff and against defendant(s) for possession of the premises and issuance of a writ of possession, and all court costs. Additionally, plaintiff requests judgment for plaintiff and against defendant(s) for the following: (**check only if applicable**)

Rent. If eviction is based on non-payment of rent, plaintiff requests judgment for unpaid rent in the amount of **\$700.00**, through the time of filing, and plaintiff also seeks judgment for rent accruing from the date of filing and becoming due thereafter as allowed by the court.

Attorney's fees. If plaintiff engages an attorney, plaintiff requests judgment for attorney's fees because (**check only one**) defendant(s) signed a written rental agreement containing a provision entitling plaintiff to attorney's fees, or plaintiff has given 10-day notice to vacate as provided in Section 24.006, Texas Property Code.

Post-judgment interest. If plaintiff is granted judgment for rent or attorney's fees, plaintiff requests judgment for post-judgment interest as allowed by statute or the rental agreement.

10. ATTACHMENTS. The court requests but does not require plaintiff to enclose with this complaint the following:

- (a) A copy (not the original) of plaintiff's notice to vacate;
- (b) A copy (not the original) of any written rental agreement; and
- (c) A copy (not the original) of the rental application of defendant(s) is also attached if the application relates to grounds for eviction.

If no one appeals this case, plaintiff does does not give permission to the court clerk to discard the above copies.

11. At this time I _____ am am not requesting for a licensed court interpreter to be present at trial to interpret the _____ language.

The Court may send any notice to plaintiff via
U.S. mail, email, telephone or fax, as set forth below

Street address: 33333 Run Away

City: El Paso

one)

State and zip: Texas, 79999

Phone, if any 915-777-7777

Fax, if any 915-777-7778

Email, if any JDoe@vahoo.com

STATE OF TEXAS
COUNTY OF EL PASO

Sworn to and subscribed before me by the above signatory on the _____ day of _____, 2009.

PLAINTIFF JOHN DOE
(as stated at top of page 1)

By _____
Signature

The above is the signature of *(check only*

- plaintiff
- Plaintiff's authorized agent
- plaintiff's attorney

John Doe
Printed name of person signing

Title of person signing (i.e., owner, manager,
president, etc.)

Notary Public for the State of Texas, or Justice
Court Clerk