

Non-Eviction Landlord-Tenant Issues

John Lackey
Staff Attorney
Texas Justice Court Training center

1

1

Funded by a Grant from the Texas Court of Criminal Appeals

© Copyright 2022. All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd; Suite 530, Austin, TX, 78744.

2

2

Agenda

- Writs of Re-entry & Writs of Restoration
- Repair & Remedy
- Writs of Retrieval
- Security Deposits

3

3

Resources

- **TJCTC Website:** <http://www.tjctc.org/tjctc-resources/Deskbooks.html>
 - Evictions Deskbook (has non-eviction landlord-tenant topics also)
 - Webinars and self-paced modules
 - Forms (newly updated!)
 - SRL packets
- **Statutes:** <http://www.statutes.legis.state.tx.us/>
- **TRCP:** <https://www.txcourts.gov/rules-forms/rules-standards/>

4

4

Abbreviations

- PC = Property Code
- TRCP = Texas Rules of Civil Procedure
- CPRC = Civil Practice and Remedies Code

5

5

Statement of Inability to Pay

- Any of the fees (filing, service, etc.) for the cases we will discuss are waived upon the filing of a Sworn Statement of Inability to Afford Payment of Court Costs.
 - Can use the form created by the Texas Supreme Court (on the TJCTC website) or any form that contains the same info.
 - Form must be made available without charge or request.

TRCP 502.3

6

6

Writs of Re-entry (Getting Back In)

&

Writs of Restoration (Getting utilities turned back on)

Property Code Chapters 92 & 93
Evictions Deskbook Chapter 9

7

7

Writs of Restoration

PC 92.008 & 92.0091

*(Only Applies To Residential
Tenancies)*

Writs of Re-entry

Residential: PC 92.0081 & 92.009

Commercial: PC 93.002 & 93.003

8

8

Residential vs. Commercial

Some of the laws we will discuss in this section apply to commercial tenancies, some apply to residential tenancies, and some apply to both.

- If you see this picture, the law applies to residential tenancies:
- If you see this picture, the law applies to commercial tenancies:

9

9

Purpose

- **Writ of Restoration:** Orders a landlord to immediately reconnect utilities that have been unlawfully disconnected.
- **Writ of Re-entry:** Orders a landlord to immediately allow a tenant to be allowed back into their rental property following an unlawful lockout.
 - A peace officer may use reasonable force to enforce the order.

PC 92.009; 92.0091

10

10

Contracting Away Rights

- Residential – PC 92.008(g); 92.0081(j)
 - The specific duties and remedies related to illegal lockouts and disconnections **cannot** be waived in a residential lease.
- Commercial – PC 93.002(h)
 - The specific duties and remedies related to illegal lockouts **can** be waived in a commercial lease.

11

11

Interruption of Utilities Paid Directly by Tenant (Residential & Commercial)

- Landlord **cannot** interrupt any utilities paid directly to a utility company unless:
 - bona fide repair
 - construction
 - Emergency

PC 92.008(a),(b); 93.002(a)

12

12

Interruption of Utilities Paid Provided by Landlord (Residential Only)

- Landlord **cannot** interrupt water, sewage, gas or electric *even if provided and paid for by landlord* other than for:
 - Bona fide repair
 - Construction
 - Emergency

Except: Very limited exception where may disconnect electricity only if electric bill specific to tenant's unit and the tenant does not pay bill on time. Lots of requirements that must be met (see PC 92.008(h)-(r)).

PC 92.008(b)

13

13

Lockout of Tenant (Residential & Commercial)

- A landlord **may not** intentionally prevent a tenant from entering the leased premises **except** by an eviction case **unless** exclusion is for one of the following:
 - Bona fide repairs, construction or an emergency.
 - Removing the contents of premises abandoned by a tenant.
 - Changing the locks on the door to the individual unit of a tenant who is delinquent in paying at least part of the rent. *(See following slides for rules for this option)*

PC 92.0081; 93.002

14

14

Rules for Delinquent Rent Lockout (Residential)

- Must be included in the lease agreement.
- Must send an **advanced warning notice**.
 - 5 days if by mail, 3 days if personally delivered, including amount owed and where it can be paid (during landlord's normal business hours).
- Must **post a notice** when locks are changed giving 24-hour access to key.
- All notices must contain statement in **underline** or **bold** that tenant **may receive new key even if they do not pay delinquent rent**.

PC 92.0081(d)

15

15

Rules for Delinquent Rent Lockout (Residential) 2

- The locks may not be changed:
 - When the tenant or legal occupant is in the dwelling.
 - More than once per rental period.
 - On a day, or the day before a day, when the landlord is not available/office is not open for delinquent rent to be paid.
- A tenant is still entitled to access to any common areas of the property (pool, gym, etc).

PC 92.0081(e)(e-1),(k)

16

16

Rules for Delinquent Rent Lockout (Residential) 3

- If the tenant calls for the key at **any hour**, the landlord must arrive within **2 hours** with the key **even if the tenant still hasn't paid**.
- **If the tenant is no longer there**, landlord must post another notice on front door stating when they were there, and where a key can be obtained during the landlord's **normal business hours**.

PC 92.0081(g)

17

17

Rules for Delinquent Rent Lockout (Commercial)

- Landlord **must** place a written notice on the tenant's front door stating the name, address, and telephone # of the individual or company where a new key may be obtained.
- The new key is required to be provided only during the **tenant's regular business hours** and only if the tenant **pays** all of the delinquent rent.

PC 93.002(f)

18

18

Larry Landlord and Terry Tenant have a residential lease stating that Larry can disconnect the water if Terry does not pay the water bill for more than 3 months. Terry didn't pay and so Larry disconnected the water. Is this an illegal disconnection?

- A. Yes
- B. No

19

19

Lenny Landlord and Tiffany Tenant have a commercial lease. Tiffany has not paid rent. Lenny locked her out and mailed her the required notice. Tiffany tried to get a new key, but Lenny refuses to give her one until she pays her rent. Is this an illegal lockout?

- A. Yes
- B. No

20

20

Tenant has 3 Options if Illegal Disconnection or Lockout Occurs:

- 1) **Terminate** the lease (*no need for court involvement, but court could end up having to rule on whether termination was lawful later on if landlord sues tenant for breaking the lease*).
- 2) **Disconnection**: Seek a **writ of restoration** ordering the landlord to reinstate the utilities (*only applies to residential leases*).
Lockout: Seek a **writ of re-entry** ordering the landlord to allow them back into the premises (*residential and commercial*).
- 3) **Sue** the landlord for money damages (*can do this in addition to either of the other 2 options*).

PC 92.008(f); 92.0081(h); 92.009; 92.0091; 93.002(g); 93.003

21

21

Suing for Money Damages

- Should be filed in the **county** where the property is located & **separately** from a request for a writ of restoration or reentry.

PC 92.007

22

22

Suing for Money Damages 2

- May recover sum of:
 - Actual damages.
 - *Residential*: One month's rent + \$1000; additional one month's rent if violation is failure to give a new key after lockout.
 - *Commercial*: One month's rent OR \$500, whichever is greater.
 - Reasonable attorney's fees.
 - Court costs.
 - Less any amount owed by the tenant.

PC 92.008(f); 92.0081(h); 93.002(g)

23

23

Procedure for Writs

- Procedure is exactly the same for both writs.
- Writ of Restoration = PC 92.0091
 - Only available in residential.
- Writ of Re-entry = PC 92.009; 93.003
 - Same procedure for residential and commercial.

24

24

Fees

- **Standard civil filing fee** – usually \$54 (check with county auditor if anything in addition to this).
- **Notice/Summons** – standard civil process service fee (varies by county, contact your auditor/constable for info).
- **Service of writ** – the standard service fee for service of a writ of possession (varies by county, contact your auditor/constable for info).

PC 92.009(l); 92.0091(k); 93.003(l)

25

25

Complaint & Testimony

- Applicant must file a sworn complaint (with facts) in the *precinct* where the rental premises are located.
- Applicant must orally state the facts under oath to the judge.

PC 92.009(b); 92.0091(b); 93.003(b)

26

26

Ex Parte Writ

- Judge determines (ex parte – no notice/hearing for landlord) whether they reasonably believe an unlawful disconnection/lockout likely occurred.
 - If no, then the case is over – no appeal of denial.
 - If yes, then writ immediately issues, which must order the landlord to immediately rectify the problem and must tell the landlord of their right to a hearing.

PC 92.009(c); 92.0091(c); 93.003(c)

27

27

Service on Landlord

- After ex parte is issued, it must be served on the landlord or their management company, on-premises manager or rent collector, in the same manner as a writ of possession.

PC 92.009(d); 92.0091(d); 93.003(d)

28

28

Hearing

- Landlord has 7 days to request a hearing and the hearing must be held 1-7 days after the request.
 - If they don't request a hearing or if judge determines at hearing that writ was properly issued, court costs may be assessed against the landlord in a judgment.
 - If hearing is held and judge determines writ was not properly issued, writ should be dissolved.

PC 92.009(e)-(f); 92.0091(e)-(f); 93.003(e)-(f)

29

29

Appeal

- Either side may appeal the ruling at the hearing, in the same manner as an eviction appeal.
- Deadline: 5 days

PC 92.009(g); 92.0091(g); 93.003(g)

30

30

What if the Landlord Fails to Comply?

- If the landlord fails to comply with the writ, tenant may file an affidavit about their failure to comply.
- Upon receiving the affidavit, court must send a show cause notice for a contempt hearing.

PC 92.009(i); 92.0091(i); 93.003(i)

31

31

At Contempt Hearing

- **If landlord didn't comply with writ at first, but has now** (*ex: didn't turn utilities back on after being served with the writ, but turned them on before the hearing*): landlord may be held in contempt and jailed up to 72 hours in jail and/or fined \$100.
- **If landlord has still not complied with writ at the time of the show cause hearing** (*ex: utilities still haven't been turned back on*): landlord may be held in contempt and jailed until they comply.

PC 92.009(i); 92.0091(i); 93.003(i)

32

32

Effect of Writ of Possession

- An eviction case could potentially be going on at the same time as a writ proceeding, but **separately**. Until a writ of possession is issued, they have no effect on each other.
- If a writ of possession is issued: a writ of reentry or restoration **loses its effect**.
 - But a writ of re-entry or restoration does not lose effect if just a judgment for possession in an eviction suit and no writ of possession yet.

33

33

Charts are in the
Evictions Deskbook
and on our Website

34

34

Joe files a sworn complaint for a Writ of Restoration in your court. The premises where the utilities have been disconnected is in a different precinct, but the landlord's residence is in your precinct. Can you issue the order if all other requirements have been met?

- A. Yes
- B. No

35

35

April files a sworn complaint requesting a writ of re-entry and pays the filing fee. What is your next step?

- A. Notice the landlord and hold a hearing.
- B. Have the tenant state the facts under oath and consider the complaint and testimony ex parte.
- C. Consider the complaint ex parte, no need for oral testimony by the tenant.

36

36

A tenant is upset that you decided not to issue an ex parte writ of restoration that they were seeking. Can they appeal your decision not to issue the writ?

- A. Yes
- B. No

37

37

Suzy followed all of the correct procedures to lock Bill out of his apartment after he stopped paying rent on his residential lease. Bill refused to pay the rent and said he never will, so Suzy refused to give him the new key when he asked for it after the lockout. Bill got a writ of re-entry from your court to force Suzy to let him back in to the apartment. Suzy refuses to comply until he pays his rent. You may commit Suzy to jail until she complies.

- A. Yes
- B. No

38

38

What if Suzy gets a writ of possession in an eviction case concerning the same premises. Does she still have to comply with the writ of re-entry?

- A. Yes.
- B. No.
- C. Need to hold a hearing to determine which writ should be followed.

39

39

A landlord files an eviction suit and gets a judgment for possession. The same day as the judgment for possession is issued, he shuts off the water and electricity. Is the tenant entitled to a writ of restoration?

- A. Yes.
- B. No.

40

40

In the Deskbook!

- The court issues a writ of re-entry and the landlord fails to comply. The tenant files the required affidavit with the court.
- What should be included in that affidavit?

41

41

Page 102

4. Landlord's Failure to Comply with Writ of Re-Entry

If the landlord or the person on whom a writ of re-entry is served fails to immediately comply with the writ or later disobeys the writ, it is grounds for contempt of court under Government Code § 21.002. *Property Code* § 92.009(i); 93.003(i).

a. Affidavit and Contempt Hearing

If the writ is disobeyed, the tenant may file an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions that show how they disobeyed. On receipt of the affidavit, the judge must issue a show cause order directing the person to appear on a designated date and show cause why he should not be held in contempt of court. *Property Code* § 92.009(i); 93.003(i).

42

42

In the Deskbook 2!

- A commercial tenant is locked out of their business for failure to pay rent. They are mad about it and file a sworn complaint for reentry. When talking to the judge, they provide false evidence that they paid all of their rent and the landlord still wouldn't give them the new key. Having no reason not to believe the evidence, the judge issues an ex parte writ of reentry, which is then served on the landlord. The landlord requests a hearing, and the writ ends up being dissolved; but the landlord is mad that they had to go through all of this for no reason.
- What, if any, remedies does the landlord have in this situation?

43

43

Page 103

c. Tenant May Pursue Other Remedies

The above contempt procedures do not affect a tenant's right to pursue a separate cause of action under Property Code § 92.0081 (residential) or 93.002 (commercial), which entitles the tenant to recover damages and civil penalties, reasonable attorney's fees and court costs. *Property Code § 92.009(j), 93.003(j)*. This means that the tenant can pursue either the contempt hearing or a separate monetary suit, or may pursue both.

5. Bad Faith Filing of Sworn Complaint for Re-Entry

If a tenant files a sworn complaint for re-entry in bad faith resulting in a writ of re-entry being served on the landlord, the landlord may recover from the tenant in a separate cause of action:

- actual damages;
- one month's rent or \$500, whichever is greater;
- reasonable attorney's fees and court costs;
- less any sums for which the landlord is liable to the tenant.

Property Code § 92.009(k); 93.003(k).

To recover for a bad faith filing the landlord has to bring a separate small claims case; they cannot recover these amounts in the writ of re-entry proceeding.

44

44

Repair & Remedy

(Getting Stuff Fixed)

Property Code Chapter 92

TRCP Rule 509

Evictions Deskbook Chapter 10

45

45

PC Subchapter B (92.051- 92.062); TRCP 509
(Only Applies to Residential Tenancies)

46

46

What is a Repair & Remedy Case?

Where a tenant seeks judicial remedies for a landlord failing to make repairs to a condition:

- which the landlord had a duty to repair, and
- which materially affects the health or safety of an ordinary tenant.

47

47

Contracting Away Rights

- Generally, no duties or remedies under this topic may be waived. (all found in PC 92.501-92.062)
- Except in certain circumstances – see Evictions Deskbook Ch. 10 and statutes for more details.
 - 92.006(d)-(f)- when/how a duty or remedy can be waived.
 - 92.0563(b) – consequences for violating law

PC 92.006(c)

48

48

When Landlord Has a Duty to Repair

- Tenant gives **notice** of the condition to the person/place where rent is paid (only has to be in writing if required by lease);
- Tenant is **not delinquent** in rent at time of notice; and
- Condition **materially affects**:
 - Health/safety of ordinary tenant; OR
 - Arises from failure to provide a device to supply hot water @ 120* or more.

PC 92.052

49

49

When Landlord Has a Duty to Repair 2

- Unless caused by normal wear and tear, landlord has no duty to repair if the condition was caused by:
 - Tenant
 - Occupant
 - Tenant's family/guest/invitees

PC 92.052

50

50

Notice & Timeframe

- If the landlord fails to repair in a reasonable time after first notice, tenant must give a **second written notice** (*and cannot be delinquent in rent at time of that notice*). *Notice & Timeframe*
 - Second notice is **not required** if first notice was written and sent certified mail return receipt requested, registered mail, or other trackable mail service or private delivery service.

PC 92.056

51

51

Notice & Timeframe 2

- Landlord becomes liable to tenant and tenant is entitled to remedies if landlord **fails to make diligent effort** to repair or remedy in **reasonable time** *after receiving the required written notice*.
 - “Reasonable time” = 7 days unless evidence is provided to show why a different amount of time would be reasonable instead
 - *Examples of types of evidence: severity and nature of condition, reasonable availability of materials/labor/utilities.*

PC 92.056

52

52

Casualty Loss

- If **insured casualty loss** (fire, smoke, flood, hail, explosion, etc), the time period for repair doesn't start until Landlord receives the insurance funds.
- If the premises are **totally unusable** (*and the loss is not caused by tenant*):
 - Either party may terminate the lease by giving written notice at any time before the repairs are completed.
- If the premises are **partially unusable** (*and the loss is not caused by tenant*):
 - Tenant is entitled to a proportionate reduction in rent, but only on a judgment of a county or district court (but landlord & tenant may agree otherwise in written lease).

PC 92.054

53

53

Closing the Premises

- May close a rental unit at any time.
- Must give written notice by certified mail, return receipt requested to the tenant, local health office, and building inspector.
- Must state that they will no longer use the unit for residential purposes or will demolish it.
 - (Can't return to renting the property or reconnect utilities for at least 6 months)

PC 92.055

54

54

Closing the Premises 2

- If a premises is closed **after receiving a notice to repair**, and tenant moves out on or before the end of the rental term, the landlord **must**:
 - Pay the tenant's actual and reasonable moving expenses.
 - Refund a prorated portion of the rent from the date the tenant moves out.
 - Return the tenant's security deposit if otherwise required by law.
- A landlord who fails to pay the amounts due to the tenant or who allows re-occupancy or utility reconnection sooner than six months, is liable to the tenant for an amount equal to the total of one month's rent plus \$100 and attorney's fees.

PC 92.055(d),(e)

55

55

Angela has a commercial lease and there are a lot of dangerous problems with the premises. Angela has sent repeated written notices by registered mail of the problems and the landlord refuses to repair any of them. Can Angela bring a repair and remedy case to address the problem?

- A. Yes
- B. No

56

56

The toilets in Billy's apartment are both broken. He hasn't sent anything in writing, but has repeatedly told the management company about the problem by phone. They still haven't fixed them and it has been over 30 days. Is the landlord liable to Billy?

A. Yes

B. No

57

57

Amy notified her landlord by phone of a condition that needed to be repaired and then sent a subsequent written notice when the repair was not made. Amy was up to date on her rent when she notified the landlord the first time, but stopped paying when he didn't make the repair. As a result, she was behind in the rent at the time of the subsequent written notice. Is the landlord liable to Amy?

A. Yes

B. No

58

58

Remedies for Tenants

- **Once a landlord is liable (as described in previous slides),** tenant has three options:
 - Terminate the lease
 - *No court involvement needed to do this, but court could end up having to rule on whether termination was lawful later on if landlord sues tenant for breaking the lease.*
 - Repair and Deduct according to PC 92.0561
 - *No court involvement needed to do this but could potentially come up in an eviction case if a tenant is claiming they don't owe rent because they've used this remedy.*
 - *See Evictions Deskbook Ch. 10 for more info on the procedures that must be followed.*
 - File Repair and Remedy case in court.

PC 92.056; 92.0563, TRCP 509

59

59

Venue & Filing Fee

- **Venue:** Case should be filed in *county* where premises are located.
 - If filed in wrong county, defendant can raise issue by filing motion to transfer venue.
- **Standard civil filing fee:** usually \$54 (check with county auditor if anything in addition to this).
- **Standard service fee** (if service is done by sheriff/constable – amount varies by county, contact your auditor/constable for info).

PC 92.007; CPRC 15.0115

60

60

Petition

TRCP 509.2 provides details on what **must** be in petition. (**Form available on TJCTC website**)

- Address of the premises and the condition in need of repair
- Info on the management company or rent collector, if applicable
- Info on the notices given to the landlord about the condition
- Description of the relief sought, including info on rent reduction
- Tenant's contact information

TRCP 509.2

61

61

Citation & Service

- **Citation:** Should immediately issue (form avail. on TJCTC website).
 - Must contain appearance/trial date 10-21 days from the date petition is filed.
- **When must be served:** At least 6 days prior to appearance date.
- **Who may serve:** Anyone authorized by 501.2 (sheriff/constable, process servicer, or person authorized by court order who is 18 years of age or older).
- **Return of service:** Must be on file no less than 1 day before appearance day.
- **Alternative Service:** Available. See Deskbook Ch. 10 & Rule 509.4(b) for info on how/when.

TRCP 509.3; 509.4

62

62

Representation, Counterclaims, & Third-Party Claims

- Parties may represent themselves (pro se), or may appear with an attorney.
 - Unlike eviction cases, authorized agents are not allowed.
 - Just like with small claims and evictions, the court could also (for good cause) allow a person to be assisted by a family member or other individual who is not being paid.
- No counterclaims or third-party claims may be heard in a Repair and Remedy case.

TRCP 500.4; 509.7

63

63

Trial

- If tenant doesn't appear: Judge may dismiss.
- If landlord doesn't appear: Judge may hear evidence and enter judgment accordingly.
- Tenant has burden of proof to show landlord didn't make diligent effort.
 - **Unless** they requested in writing an explanation of the delay, and the landlord didn't respond in writing within 5 days.
 - Then landlord has burden to show they **did** make diligent effort.

TRCP 509.5; PC 92.053

64

64

Judgment

If the judge finds that the landlord is liable, a written judgment should be entered. The judge may include in the order:

- Order directing landlord to take reasonable action to repair or remedy (*Not an option if lease was terminated*)
- Order reducing tenant's rent based on loss of value due to the condition – from date of first notice until repairs were made (*Not an option if lease was terminated*)
- Civil Penalty: One month's rent + \$500
- Actual damages, court costs, and attorney's fees

PC 92.055; 92.056; 92.0563

65

65

Judgment 2

- Judgment may not exceed \$10,000, including attorney's fees. (*Note: the jurisdictional increase did not apply here*).
- Must be clear, explicit, and in writing.
- Must be signed, dated, and contain the names of the parties and street address of premises.
- Must be served on the defendant in open court or as provided in Rule 501.4.
- Disobedience is grounds for contempt.

TRCP 509.6

66

66

Appeal

- Either party may appeal within **21 days** of judgment, modification, or denial of motion for new trial.
 - Only need written Notice of Appeal – no appeal bond.
- Once appeal is perfected, the judgment is vacated and justice court may not do anything further on the case, including enforcing the order.

TRCP 509.8

67

67

What if Landlord Wins an Eviction Case Against Tenant?

- Eviction could potentially be going on separately at the same time.
- If a **final judgment** for possession is entered, it will vacate an order to repair or remedy a condition.
 - Any monetary award will stay in place.
 - Any rent deduction up to the time of the judgment for possession will stay in place.

TRCP 509.9

68

68

A tenant brings a repair and remedy case against her landlord. The landlord says the tenant is behind in rent. What are the landlord's options?

- A. File a counterclaim for the unpaid rent in the repair and remedy case.
- B. Present the rent delinquency as an argument in the repair and remedy case that the landlord is not liable.
- C. File a separate suit for the unpaid rent claim.
- D. Both B and C

69

69

An appeal of a repair and remedy case must be filed:

- A. Within 5 days (same as an eviction appeal) along with an appeal bond.
- B. Within 5 days (same as an eviction appeal) but only a notice of appeal is needed.
- C. Within 21 days along with an appeal bond.
- D. Within 21 days but only a notice of appeal is needed.

70

70

In the Deskbook 3!

- A landlord and tenant have a provision in their lease that, except for conditions caused by the negligence of the landlord, the tenant has to pay for any repairs for damage from wastewater stoppages caused by foreign or improper objects in lines that exclusively serve the tenant's dwelling; damage to doors, windows, or screens; and damage from windows or doors left open.
- Is this provision valid?

71

71

Page 113 - 114

A landlord and tenant may also agree that, except for conditions caused by the negligence of the landlord, the **tenant has a duty to pay for repairs of the following conditions:**

- Damage from wastewater stoppages caused by foreign or improper objects in lines that exclusively serve the tenant's dwelling;
- Damage to doors, windows or screens; **and**
- Damage from windows or doors left open.

Property Code § 92.006(f).

Such an agreement must be in writing, underlined or printed in boldface, specific and clear, and made knowingly, voluntarily and for consideration. *Property Code § 92.006(f).* And it cannot affect the landlord's duty to repair or remedy, at the landlord's expense, wastewater stoppages or backups caused by deterioration, breakage, roots, ground conditions, faulty construction, or malfunctioning equipment. *Property Code § 92.006(f).*

72

72

Some Fun Repairs

73

73

Writs of Retrieval

(Getting Certain Personal Property
Out)

Property Code Chapter 24A
Evictions Deskbook Chapter 9

74

74

Writs of retrieval
PC Chapter 24A
(Only Applies to Residential Tenancies)

75

75

Purpose

- When a person is not permitted into their residence or former residence and needs to retrieve belongings for themselves or their dependents.
- They can ask a court to order a peace officer to accompany them to retrieve specific items of personal property that are on the list of allowed types of property.

PC 24A.001; 24A.002(a)

76

76

“Peace Officer” means:

- Sheriffs, their deputies, constables, and deputy constables.
- Those reserve deputy sheriffs and constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code.

CCP 2.12(1),(2)

77

77

Where Application Must be Filed

- If the applicant & occupant are parties to a pending divorce or annulment case or to a completed divorce decree or annulment that covers the property being sought, the application must be filed in the court that has jurisdiction over that case.
 - The application must certify whether either of the above situations applies.
- If neither of the above applies, the application may be filed in any justice court in the state.

24A.002(a-1)

78

78

Allowed Types of Property

- medical records
- medicine and medical supplies
- clothing
- child-care items
- employment records
- legal or financial documents
- copies of electronic records containing legal or financial documents
- checks or bank or credit cards in the name of the applicant
- personal identification documents

PC 24A.002(b)(3)

79

79

Allowed Types of Property 2

- Assistance or service animals used by the applicant or their dependent.
 - Defined as a canine that is specially trained or equipped to help a person with a disability and that is used by a person with a disability (*Human Resources Code § 121.002*).
- Wireless communication devices belonging to the applicant or their dependent.
 - Defined as a device that uses a commercial mobile service, as defined by 47 U.S.C. Section 332 (*Transportation Code § 545.425(a)*).
- Tools, equipment, books, and apparatus used by the applicant in their trade or profession.
 - **Question: What is an example of something that would fall under this category?**

PC 24A.002(b)(3)

80

80

Fee

- **Standard civil filing fee** – usually \$54 (check with county auditor if anything in addition to this).
- **Notice/Summons** – standard civil process service fee (varies by county, contact your auditor/constable for info).
- **Executing writ** – whatever has been set by the commissioners court. If nothing specific set for this, can charge “other writ fee.”
 - See Local Gov’t Code 118.131 for info on fees set by commissioners court.

Remember: they could also file a Statement of Inability to Pay Court Costs instead of paying the fees.

81

81

Application Requirements

- Certify that the current occupant has denied entry to the applicant or poses a clear and present danger of family violence to applicant/dependent;
- Certify no court order prohibiting contact with the current occupant of the residence exists;

PC Ch. 24A.002(b)

82

82

Application Requirements 2

- Describe with specificity the items to be retrieved (and state that they are all allowed types of property);
- Claim the applicant/dependent will suffer personal harm if the items are not obtained promptly; and
- Include a lease or “other documentary evidence” that shows the applicant is/was authorized to occupy the residence.

PC Ch. 24A.002(b)

83

83

Bond

- Before a writ may be issued, applicant must file a bond approved by the JP.
 - The bond is an amount of money that the applicant puts up to protect the occupant in case any property is wrongfully included in the writ.
 - The amount should often be very low since it cannot be waived for indigent applications and the value of the items is usually quite low.
- Exception: no bond is required if there is a clear and present danger of family violence (*testimony by applicant can be enough to demonstrate this*)

PC Ch. 24A.002(c)

84

84

Bond Requirements

- Have 2 or more good and sufficient non-corporate sureties or 1 corporate surety;
- Be payable to the occupant of the residence;
- Be in “an amount required by the justice” (pick an amount that is reasonable and will protect the occupant); and
- Be conditioned on the applicant paying all damages and costs adjudged against the applicant for wrongful property retrieval.

PC Ch. 24A.002(c)

85

85

Notice & Hearing

- “Sufficient notice” AND “an opportunity to be heard” must be provided to the current occupant before writ may be issued.
 - **Except:** May issue ex parte writ (no notice/opportunity to be heard required) if applicant certifies that occupant poses clear & present danger of family violence to applicant/dependent & JP finds immediate and irreparable harm will occur otherwise.
 - *For additional info on ex parte writs of retrieval (including how & when court can recess the hearing and call the occupant to tell them that they can bring the property to court or attend the hearing), see Ch. 9 of the Evictions Deskbook.*

PC Ch. 24A.002(e)(5), .0021

86

86

Time of Notice & Hearing

- No specific guidance as to time required between service of the notice and holding a hearing.
- TJCTC's position:
 - 24 hours between notice and hearing seems reasonable based on the circumstances and purpose of the statute
 - Notice may be served in person or by posting the notice on the front door of the premises.

PC Ch. 24A.002(e)(5)

87

87

To Writ or Not to Writ

The writ may be issued (for allowed items) if the application can be filed in justice court, all requirements are met, and the judge finds:

- Applicant has been denied entry by the occupant or there is a family violence danger;
- No PO, EPO, or other order prohibiting contact exists;
- There is sufficient evidence of urgency and potential risk of harm to the applicant or their dependents if the items are not retrieved promptly;
- Applicant is/was authorized to occupy premises according to a lease or other documentary evidence; and
- Notice and opportunity for hearing was provided to the current occupant.

PC Ch. 24A.002(e), 24A.002(b)(1)

88

88

No Appeal

There is no provision for appeal.

89

89

Executing the Writ

- If the court grants the application and issues a writ, a peace officer shall accompany the applicant to the premises and assist them in getting inside and retrieving the items listed in the writ.
 - Only items listed on the writ may be taken!
- If the current occupant is present, the officer shall provide him or her with a copy of the writ.

PC Ch. 24A.003

90

90

Executing the Writ-Inventory

- All property must be inventoried by the officer before removal, and the officer must:
 - 1) Provide an inventory list to the occupant (but if the occupant is not present, the officer may leave the list in an obvious place); and
 - 2) File the inventory list with the court.

PC Ch. 24A.003

91

91

Consequences for Interfering

- It is a Class B Misdemeanor to interfere with retrieval of personal property under the writ.
 - No contempt of court if occupant interferes – order is to the peace officer, not the occupant.
- Defense: if defendant did not receive a copy of the writ or other notice that the entry or retrieval of property was authorized.
- Offense could also be committed by the applicant, although less likely (e.g. disruptive behavior)

PC Ch. 24A.005

92

92

Occupant Complaint

- **Why:** If occupant alleges that applicant took property not belonging to applicant.
- **Deadline:** 10 days after the “date of authorized entry.”
- **Where:** In court that issued writ of retrieval.
- **Hearing:** If complaint filed, court shall “promptly” hold a hearing and rule on ownership of the property.
- **Other options:** Small claims lawsuit or other legal remedies.

PC Ch. 24A.006

93

93

Summary of Writ of Retrieval Case

- Person seeking to retrieve property (and who can file in justice court) files an application, pays any fees, and posts a bond (bond waived if danger of family violence).
- Court provides notice to the occupant and holds a hearing (may waive notice and hold ex parte hearing if danger of family violence).
- Court issues a writ of retrieval (or denies issuance).
- Peace officer assists applicant in retrieval of property.
- Peace officer inventories property.
- Occupant may file a complaint and have a hearing if property is wrongfully taken.
- No appeal process.

PC Ch. 24A

94

94

Which of the following people could ask for a writ of Retrieval in your court?

Hint: 2 answers

- A. Brian moved out of his apartment, where his name is on the lease. Your court is in a different county. He needs financial documents and his ex-girlfriend won't let him back in to get them.
- B. Cassie was over at her in-laws' house for Thanksgiving. At dinner, an argument broke out over politics and the in-laws kicked her out. She needs childcare items that she left there.
- C. Brandy works as a mechanic. Her ex-roommate won't let her back in to the house where she was living to get her tools.

95

95

No constable/sheriff or deputy constable/sheriff is available to accompany the applicant to execute the writ of retrieval. In this case, a municipal peace officer may accompany the applicant.

A.True

B.False

96

96

Annie was living with her boyfriend Fred at his apartment. She was not on the lease but has a sworn statement saying that she lived there. Fred says he didn't exclude her. She has Facebook messages from him saying that she'll be sorry if she shows her face there again. She wants help getting her cell phone and her medicine out of the apartment. Which of the following could you potentially order?

- A. A writ to retrieve her cell phone and her medicine.
- B. A writ to retrieve her medicine only.
- C. Nothing – she wasn't on the lease.
- D. Nothing – she wasn't denied entry.

97

97

Same facts as previous question – What if Annie wants to retrieve her selection of Guns N' Roses concert T-shirts. could she accomplish this with a writ of retrieval?

- A. Yes
- B. No
- C. Maybe

98

98

In the Deskbook 4!

- You issue a writ of retrieval. When the constable is executing the writ, the occupant is not home and so he gets the landlord to open the door.
- Could the landlord be liable if the applicant wrongfully takes property that belongs to the occupant?

99

99

Page 92 - 93

3. Execution of the Writ of Retrieval

If a writ of retrieval is granted, a peace officer must accompany and assist the applicant in making the authorized entry and retrieving the personal property listed in the application. *Property Code § 24A.003(a).*

If the current occupant is present at the time of the entry, the peace officer must provide the occupant with a copy of the writ authorizing the entry and retrieval. *Property Code § 24A.003(b).*

A landlord who permits or facilitates entry into a residence under a writ of retrieval is not civilly or criminally liable for an act or omission that arises in connection with permitting or facilitating the entry. *Property Code § 24A.004.*

100

100

Security Deposits

Property Code Chapters 92 & 94
Evictions Deskbook Chapters 11

101

101

Residential Tenancy Security Deposits: Before Move In

- A tenant pays a security deposit in advance but never occupies the residence, the landlord may **not keep** the security deposit **if** a replacement tenant is found who occupies the residence on or before the original lease start date.
- If the landlord has to find a replacement tenant, the landlord may keep the lease cancellation fee **or** actual expenses, including a reasonable amount for the landlord's time.

PC 92.1031

102

102

Residential Tenancy Security Deposits: After Move Out

After move out:

- A landlord must refund a security deposit (other than what they are entitled to keep) within **30 days** of the tenant moving out.
- If the tenant has provided a forwarding address in writing, the landlord must **send** the deposit to the tenant.
- If the tenant has not provided a forwarding address, the tenant is still entitled to the deposit, but it becomes the tenant's responsibility to pick it up.
- **The tenant's claim to the security deposit takes priority over any creditor.**

PC 92.103, .107

103

103

Residential Tenancy Security Deposits: Keeping Some or All of It

- Before returning a security deposit, the landlord may deduct money for damages and charges the tenant is liable for under the lease or as a result of breaching the lease.
- A landlord **cannot** keep any money to cover **normal wear and tear**.

PC 92.104

104

104

Residential Tenancy Security Deposits: Keeping Some or All of the Security Deposit 2

- If the landlord keeps some or all of the security deposit, the landlord **must** give a written description and itemized list of all deductions to the tenant.
- **Except:** A description and itemized deductions list does not have to be given to the tenant if:
 - The tenant owes rent when he/she moved out, &
 - There is no controversy over the amount of rent owed.

PC 92.104

105

105

Residential Tenancy Security Deposits: In Lieu of Last Month's Rent

- A tenant can't refuse to pay some or all of their last month's rent on the grounds that the security deposit can be used to cover the unpaid rent amount.
- A tenant who does this acts in bad faith.
 - If the landlord sues, the tenant can be liable to the landlord for 3 times the amount of rent owed and the landlord's attorney's fees.

PC 92.108

106

106

Residential Tenancy Security Deposits: Bad Faith Retention

- A landlord who fails to return a security deposit or provide an itemized list of deductions within **30 days** is presumed to have acted in bad faith.
 - *Proving that retention of any part of the security deposit was reasonable is up to the landlord.*
- If a landlord withholds a security deposit in bad faith, the tenant may file a small claims lawsuit for:
 - 3 times the portion of the deposit wrongfully withheld + \$100, and
 - Attorney's fees

PC 92.109

107

107

Residential Tenancy Security Deposits: Bad Faith Retention 2

- A landlord who, in bad faith, doesn't provide an itemized list of deductions:
 - Forfeits the right to withhold any portion of the deposit,
 - Forfeits the right to bring suit for damages to the premises, and
 - Is liable for the tenant's attorney's fees.

PC 92.109

108

108

Commercial Tenancy Security Deposits

- The landlord's and tenant's rights and obligations concerning a security deposit for a commercial lease are similar to those for a residential lease.
- The difference: the landlord has **60 days**, rather than 30 days, after the tenant moves out to return the tenant's security deposit and/or provide a written description and itemized list of deductions.

PC 93.005, Ch. 93

109

109

Security Deposits: More Info

- Evictions Deskbook Chapter 11
- Residential: PC 92.101-92.110
- Commercial: PC 93.004-93.012

110

110

Early Lease Termination by Tenant

- In certain situations, a tenant (or their estate) may terminate a lease and avoid liability for doing so:
 - Family violence
 - Certain sex offenses or stalking
 - Military service
 - Dwellings located in a floodplain
 - Death of the tenant
- Specific requirements and procedures apply.
- See Evictions Deskbook Ch. 15 for more information.

111

111

Additional Topics Not Covered in this Presentation

- See Evictions Deskbook, especially Chapters 11-15
- See Property Code Chapters 92 & 93

112

112

Tenant gets his security deposit back but it's for \$500 less than the amount he paid. The landlord includes a note that says "Here's your deposit. I kept some money to re-paint the walls because they haven't been painted since you moved in." Did the landlord follow the proper procedure to be able to keep some of the tenant's security deposit?

- A. Yes – He told him why he was keeping the money.
- B. Yes – Normal wear and tear is something a landlord can deduct money for.
- C. No – The note does not count as an itemized deduction.
- D. No – Normal wear and tear is not something a landlord can deduct money for.
- E. No – The note does not count as an itemized deduction and normal wear and tear is not something a landlord can deduct money for.

113

113

A victim of family violence may terminate their lease early if they follow certain required procedures.

- A. True
- B. False

114

114

In the Deskbook 5!

- A residential tenant has filed a case alleging that the landlord retained her rental application deposit, and since it is essentially a security deposit, she is entitled to have it returned.
- Does the rental application deposit count as a security deposit?

115

115

Page 134

Subchapter C ("Security Deposits") of Chapter 92 of the Property Code, applies to all residential leases. *Property Code § 92.101.*

Subchapter C ("Security Deposit") of Chapter 94 of the Property Code, applies specifically to all manufactured home leases. These two subchapters are nearly identical to each other.

A residential or manufactured home lot tenant who is improperly denied a refund of his security deposit may bring a suit in justice court (provided the amount in controversy falls within the justice court's jurisdiction) to recover the security deposit and civil penalties and attorney's fees.

Definition

A "security deposit" is any advance of money (other than a rental application deposit or an advance payment of rent) that is intended primarily to secure performance under a lease of a dwelling or lot that has been entered into by a landlord and a tenant. *Property Code §§ 92.102; 94.101*

This means that a security deposit serves as potential compensation for a landlord in the case that a tenant fails to pay rent or is liable for other damages under the lease or for breaching the lease.

116

116

Security Deposit Suit

A **security deposit suit** must be filed as a separate cause of action from an eviction suit filed by a landlord since a tenant may not file a counterclaim in an eviction suit.

Hanks v. Lake Towne Apartments

Questions?

Thank you!

John Lackey, TJCTC Staff Attorney

j.lackey@txstate.edu

512-347-9927 ext. 207

117