LANDLORD AND TENANT
REPAIR ISSUES

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Repair Issues

Residential:
* Waiver/Expansion: Section 92.006

* Repair Issues: Chapter 92, Subchapter B
  TRCP Rule 509

* Other Repair-type Issues:
  * Security Devices: Chapter 92, Subchapter C
  * Smoke Alarms: Chapter 92, Subchapter F

Commercial:
* Implied Warranty of Suitability
RESIDENTIAL LEASES

LEASE PROVISIONS
Sec. 92.006

WAIVERS

&

EXPANSION OF DUTIES
Sec. 92.006(h). WAIVER ... OF DUTIES AND REMEDIES.

Tenant’s right to Jury trial cannot be waived
(Leases entered into after January 1, 2016)
Sec. 92.006. WAIVER ... OF DUTIES AND REMEDIES.

• (c) A landlord's duties and the tenant's remedies ... , which covers conditions “materially affecting the physical health or safety of the ordinary tenant”, may not be waived except in limited circumstances.
Sec. 92.006. WAIVER OR EXPANSION OF DUTIES AND REMEDIES.

• (d) A landlord and a tenant may agree for the tenant to repair or remedy, at the landlord's expense.
(e) A landlord and a tenant may agree for the tenant to repair or remedy, at the tenant's expense, any condition covered by Subchapter B if all of 4 below conditions are met:
Sec. 92.006. WAIVER OF DUTY TO REPAIR.

• (1) at the beginning of the lease term the landlord owns only one rental dwelling;
Sec. 92.006. WAIVER OF DUTY TO REPAIR.

• (2) at the beginning of the lease term the dwelling is free from any condition which would materially affect the physical health or safety of an ordinary tenant;
(3) at the beginning of the lease term the landlord has no reason to believe that any condition described... is likely to occur or recur during the tenant's lease term or during a renewal or extension;
Sec. 92.006. WAIVER OF DUTY TO REPAIR.

(4)(A) the lease is in writing;

  (B) the agreement for repairs by the tenant is either underlined or printed in boldface in the lease or in a separate written addendum;

  (C) the agreement is specific and clear; and

  (D) the agreement is made knowingly, voluntarily, and for consideration.
Sec. 92.006. WAIVER OR EXPANSION OF DUTIES AND REMEDIES.

(f) A landlord and tenant may agree that, except for those conditions caused by the negligence of the landlord, the tenant has the duty to pay for certain repairs that may occur during the lease term or a renewal or extension.
Sec. 92.006. WAIVER OR EXPANSION OF DUTIES AND REMEDIES.

Those conditions are:

(1) damage from wastewater stoppages caused by foreign or improper objects in lines that exclusively serve the tenant's dwelling;

(2) damage to doors, windows, or screens; and

(3) damage from windows or doors left open.
Sec. 92.006. WAIVER OR EXPANSION OF DUTIES AND REMEDIES.

- The above agreement shall not affect the landlord's duty under Subchapter B 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.
TPC 92.024

A landlord is required to provide a copy of the lease.
Implied Warranty of Habitability

*Kamarath v. Bennett*

(Tex. 1978)
ISSUE:

This case presents the question of whether in Texas an implied warranty of habitability arises as a consequence of a residential landlord-tenant relationship.
Kamarath v. Bennett

HOLDING:

• ..in a rental of a dwelling unit, whether for a specified time or at will, there is an implied warranty of habitability by the landlord that the apartment is habitable and fit for living.
Kamarath v. Bennett

HOLDING:

• This means that at the inception of the rental lease there are no latent defects in the facilities that are vital to the use of the premises for residential purposes and that these essential facilities will remain in a condition which makes the property livable.
REPAIRS

TEXAS PROPERTY CODE
CH. 92. REPAIR OR CLOSING OF LEASEHOLD
* Sec. 92.051 - 92.061

TEXAS RULES OF CIVIL PROCEDURE
* Rule 509
Sec. 92.061. EFFECT ON OTHER RIGHTS

• The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of existing common law and other statutory law warranties and duties of landlords for maintenance, repair, security, habitability, and non-retaliation, and remedies of tenants for a violation of those warranties and duties.
Landlord’s Duty to Repair
Sec. 92.052

(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.
Sec. 92.053. BURDEN OF PROOF.

• The Burden of Proof regarding repairs is initially on the Tenant.
Sec. 92.053. BURDEN OF PROOF.

• (a) Except as provided by this section, the tenant has the burden of proof in a judicial action to enforce a right resulting from the landlord's failure to repair or remedy a condition under Section 92.052.
Sec. 92.053. BURDEN OF PROOF.

• The Burden of Proof may shift to Landlord under certain circumstances.
Sec. 92.053. BURDEN OF PROOF

• (b) If the landlord does not provide a written explanation for delay in performing a duty to repair or remedy on or before the fifth day after receiving from the tenant a written demand for an explanation, the landlord has the burden of proving that he made a diligent effort to repair and that a reasonable time for repair did not elapse.
Sec. 92.056(e): Tenant’s Remedies

A tenant to whom a landlord is liable for failing to repair may:

1. terminate the lease;
2. have the condition repaired or remedied according to Section 92.0561;
3. deduct from the tenant's rent, without necessity of judicial action, the cost of the repair or remedy according to Section 92.0561; and
4. obtain judicial remedies according to Section 92.0563.
Tenant’s Remedies

(f) A tenant who elects to terminate the lease under Subsection (e) is:

(1) entitled to a pro rata refund of rent from the date of termination or the date the tenant moves out, whichever is later;

(2) entitled to deduct the tenant's security deposit from the tenant's rent without necessity of lawsuit or obtain a refund of the tenant's security deposit according to law; and

(3) not entitled to the other repair and deduct remedies under Section 92.0561 or the judicial remedies under Section 92.0563(a) (1) [Order for Repairs] and (2) [Order Decreasing Rent].
Tenant’s Remedies
TPC 92.056(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 [Repair and Deduct].
NOTICE AND TIME FOR REPAIR.
TPC 92.056.

(b) A landlord is liable to a tenant as provided by this subchapter if 6 items met:

• (1) the tenant has given the landlord notice to repair or remedy a condition by giving that notice to the person to whom or to the place where the tenant's rent is normally paid;
NOTICE AND TIME FOR REPAIR.
TPC 92.056.

(b) A landlord is liable to a tenant as provided by this subchapter if 6 items met:

... 

- (2) the condition materially affects the physical health or safety of an ordinary tenant; [or lacks hot water at 120 degrees]

...
NOTICE AND TIME FOR REPAIR.
TPC 92.056.
(b) A landlord is liable to a tenant as provided by this subchapter if 6 items met:

• (3) the tenant has given the landlord a subsequent written notice to repair or remedy the condition after a reasonable time to repair or remedy the condition following the notice given under Subdivision (1) or the tenant has given the notice under Subdivision (1) by sending that notice by certified mail, return receipt requested, or by registered mail;
NOTICE AND TIME FOR REPAIR.
TPC 92.056.

(b) A landlord is liable to a tenant as provided by this subchapter if 6 items met:

... 

• (4) the landlord has had a reasonable time to repair or remedy the condition after the landlord received the tenant's notice under Subdivision (1) and, if applicable, the tenant's subsequent notice under Subdivision (3); 

...
NOTICE AND TIME FOR REPAIR.
TPC 92.056.
(b) A landlord is liable to a tenant as provided by this subchapter if 6 items met:

• (5) the landlord has not made a diligent effort to repair or remedy the condition after the landlord received the tenant's notice under Subdivision (1) and, if applicable, the tenant's notice under Subdivision (3); and
NOTICE AND TIME FOR REPAIR.
TPC 92.056.

(b) A landlord is liable to a tenant as provided by this subchapter if 6 items met:

• (6) the tenant was not delinquent in the payment of rent at the time any notice required by this subsection was given.
NOTICE FOR REPAIR:
1 or 2 Notice Methods

The tenant must give 1 notice (if first notice is sent by certified or registered mail)*

* For leases entered into after January 1, 2016 add:
“….or by another form of mail that allows tracking of delivery from United States Postal Service or a private delivery service”

The tenant must give 2 notice (if first notice is given anyway other than by certified or registered mail - or, for leases after 1/1/16, tracking mail).
TWO NOTICE METHOD FOR REPAIR. TPC 92.052(d).

The tenant’s initial notice must be in writing only if the tenant’s lease is in writing and requires written notice.
TWO NOTICE METHOD FOR REPAIR. TPC 92.056(b)(3).

The tenant’s subsequent notice must be in writing.

Thus, there is no scenario where oral notices alone will make the landlord liable.
RECEIPT OF NOTICE FOR REPAIR.
TPC 92.056(c).

A landlord is considered to have received the tenant's notice ...

when the landlord or the landlord's agent or employee has actually received the notice

or

when the United States Postal Service has attempted to deliver the notice to the landlord.
Sec. 92.056(d). TIME FOR REPAIR.
REBUTTABLE PRESUMPTION

... in determining whether a period of time is a reasonable time to repair or remedy a condition, there is a rebuttable presumption that seven days is a reasonable time.
Sec. 92.056(d). FACTORS TO REBUT PRESUMPTION

To rebut that presumption:

• the date on which the landlord received the tenant's notice,

• the severity and nature of the condition, and

• the reasonable availability of materials and labor and of utilities from a utility company

... must be considered.
Sec. 92.0561.
TENANT'S REPAIR AND DEDUCT REMEDIES

(a) If the landlord is liable to the tenant under Section 92.056(b), the tenant may have the condition repaired or remedied and may deduct the cost from a subsequent rent payment as provided in this section.
Sec. 92.0561.

TENANT'S REPAIR AND DEDUCT REMEDIES

(b) The tenant's deduction for the cost of the repair or remedy may not exceed the amount of one month's rent under the lease or $500, whichever is greater. *
(b) ...., if the tenant's rent is subsidized in whole or in part by a governmental agency, the deduction limitation of one month's rent shall mean the fair market rent for the dwelling and not the rent that the tenant pays.

The fair market rent shall be determined by the governmental agency subsidizing the rent, or in the absence of such a determination, it shall be a reasonable amount of rent under the circumstances.
Sec. 92.0561.

TENANT'S REPAIR AND DEDUCT REMEDIES

(c) Repairs and deductions under this section may be made as often as necessary so long as the total repairs and deductions in any one month do not exceed one month's rent or $500, whichever is greater.
Sec. 92.0561(d). TENANT'S REPAIR AND DEDUCT REMEDIES

Repairs under this section may be made only if all of the following requirements are met:

- (1) The landlord has a duty to repair or remedy the condition, and the duty has not been waived in a written lease by the tenant.

- (2) The tenant has given notice to the landlord, and if required, a subsequent written notice, and at least one of those notices states that the tenant intends to repair or remedy the condition.
  - The notice shall also contain a reasonable description of the intended repair or remedy.

- (3) Any one of the following 4 events has occurred: (continued)
Sec. 92.0561. TENANT'S REPAIR AND DEDUCT REMEDIES #

Repair and Deduct 4 conditions:

(1) The backup or overflow of raw sewage inside the tenant's dwelling or the flooding from broken pipes or natural drainage inside the dwelling.

(2) The landlord has expressly or impliedly agreed in the lease to furnish potable water to the tenant's dwelling and the water service to the dwelling has totally ceased.

(3) The landlord has expressly or impliedly agreed in the lease to furnish heating or cooling equipment; the equipment is producing inadequate heat or cooled air; and the landlord has been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the lack of heat or cooling materially affects the health or safety of an ordinary tenant.

(4) The landlord has been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the condition materially affects the health or safety of an ordinary tenant.
Sec. 92.0561. TENANT'S REPAIR AND DEDUCT – 4 CONDITIONS

(1) The landlord has failed to remedy the backup or overflow of raw sewage inside the tenant's dwelling or the flooding from broken pipes or natural drainage inside the dwelling.
Sec. 92.0561. TENANT'S REPAIR AND DEDUCT – 4 CONDITIONS

(2) The landlord has expressly or impliedly agreed in the lease to furnish potable water to the tenant's dwelling and the water service to the dwelling has totally ceased.
(3) The landlord has expressly or impliedly agreed in the lease to furnish heating or cooling equipment; the equipment is producing inadequate heat or cooled air; and the landlord has been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the lack of heat or cooling materially affects the health or safety of an ordinary tenant.
Sec. 92.0561. TENANT'S REPAIR AND DEDUCT – 4 CONDITIONS

(4) The landlord has been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the condition materially affects the health or safety of an ordinary tenant.
Sec. 92.0561(e). TIMING REPAIR AND DEDUCT REMEDIES

If the requirements to repair and deduct are met, and the landlord has failed to repair or remedy the condition, a tenant may have the condition repaired or remedied:

Immediately:

(1) Sewage or flooding.
Sec. 92.0561(e). TIMING REPAIR AND DEDUCT REMEDIES

If the requirements to repair and deduct are met, and the landlord has failed to repair or remedy the condition, a tenant may have the condition repaired or remedied:

Within three days:

(2) Cessation of potable water

(3) Inadequate heat or cooled air *

* L agreed to provide and official confirmation
Sec. 92.0561(e). TIMING REPAIR AND DEDUCT REMEDIES

If the requirements to repair and deduct are met, and the landlord has failed to repair or remedy the condition, a tenant may have the condition repaired or remedied:

Within seven days:

(4) a condition affecting the physical health or safety of an ordinary tenant *

* official confirmation
Sec. 92.0561(f). TENANT'S REPAIR AND DEDUCT REMEDIES

Repairs made pursuant to the tenant's notice must be made by a company, contractor, or repairman listed in the yellow or business pages of the telephone directory or in the classified advertising section of a newspaper of the local city, county, or adjacent county at the time of the tenant's notice of intent to repair.
Sec. 92.0561(f). TENANT'S REPAIR AND DEDUCT REMEDIES

- Unless the landlord and tenant agree otherwise, repairs may not be made by the tenant, the tenant's immediate family, the tenant's employer or employees, or a company in which the tenant has an ownership interest.

- Repairs may not be made to the foundation or load-bearing structural elements of the building if it contains two or more dwelling units.
A landlord and a tenant may mutually agree for the tenant to repair or remedy, at the landlord's expense, any condition of the dwelling regardless of whether it materially affects the health or safety of an ordinary tenant.

However, the landlord's duty to repair or remedy conditions covered by this subchapter may not be waived except as provided by Subsection (e) or (f) of Section 92.006.
Sec. 92.0561(i). TENANT'S REPAIR AND DEDUCT PROCEDURE

• (j) When deducting the cost of repairs from the rent payment, the tenant shall furnish the landlord, along with payment of the balance of the rent, a copy of the repair bill and the receipt for its payment. A repair bill and receipt may be the same document.
Sec. 92.0562.
LANDLORD AFFIDAVIT FOR DELAY.

(a) The tenant must delay contracting for repairs under Section 92.0561 if, before the tenant contracts for the repairs, the landlord delivers to the tenant an affidavit, signed and sworn to under oath by the landlord or his authorized agent and complying with this section.
Sec. 92.0562(b).
LANDLORD AFFIDAVIT FOR DELAY.

The affidavit must:

• summarize the reasons for the delay and the diligent efforts made by the landlord up to the date of the affidavit to get the repairs done.

• state facts showing that the landlord has made and is making diligent efforts to repair the condition,

• contain dates, names, addresses, and telephone numbers of contractors, suppliers, and repairmen contacted by the owner.
Sec. 92.0562.
LANDLORD AFFIDAVIT FOR DELAY.

(c) Affidavits under this section may delay repair by the tenant for:

• (1) **15 days** if the landlord's failure to repair is caused by a delay in obtaining necessary **parts** for which the landlord is not at fault; or

• (2) **30 days** if the landlord's failure to repair is caused by a general shortage of **labor** or **materials for repair following a natural disaster** such as a hurricane, tornado, flood, extended freeze, or widespread windstorm.
Affidavit for Delay

- (d) Affidavits for delay based on grounds other than those listed in Subsection (c) of this section are unlawful, and if used, they are of no effect.

- The landlord may file subsequent affidavits, provided that the total delay of the repair or remedy extends no longer than six months from the date the landlord delivers the first affidavit to the tenant.
Affidavit for Delay

• (f) Affidavits for delay by a landlord under this section must be submitted in good faith.

• Following delivery of the affidavit, the landlord must continue diligent efforts to repair or remedy the condition.
Affidavit for Delay

• There shall be a rebuttable presumption that the landlord acted in good faith and with continued diligence for the first affidavit for delay the landlord delivers to the tenant.
Affidavit for Delay

Burden shifts to Landlord:

• The landlord shall have the burden of pleading and proving good faith and continued diligence for subsequent affidavits for delay.
A landlord who violates this section shall be liable to the tenant for all judicial remedies under Section 92.0563 except that the civil penalty under Subdivision (3) of Subsection (a) of Section 92.0563 shall be one month's rent plus $1,000.
Sec. 92.0563. TENANT'S 5 JUDICIAL REMEDIES

(a) A tenant's judicial remedies under Section 92.056 shall include:

• (1) an order directing the landlord to take reasonable action to repair or remedy the condition;

• (2) an order reducing 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;

• (3) a judgment against the landlord for a civil penalty of one month's rent plus $500;

• (4) a judgment against the landlord for the amount of the tenant's actual damages; and

• (5) court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.
Tenant's judicial remedies under Section 92.0563

• (1) an order directing the landlord to take reasonable action to repair or remedy the condition;
Tenant's judicial remedies under Section 92.0563

(2) an order reducing 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;
Tenant's judicial remedies under Section 92.0563

- (3) a judgment against the landlord for a civil penalty of one month's rent plus $500;
Tenant's judicial remedies under Section 92.0563

• (4) a judgment against the landlord for the amount of the tenant's actual damages; and
Tenant's judicial remedies under Section 92.0563

• (5) court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.
Sec. 92.0563(b)

- Effect of Improper Waiver of Duty to Repair
Sec. 92.0563(b).

TENANT'S JUDICIAL REMEDIES

A landlord who knowingly violates Section 92.006 by contracting orally or in writing with a tenant to waive the landlord's duty to repair under this subchapter shall be liable to the tenant for:

* actual damages
* a civil penalty of one month's rent plus $2,000 and
* reasonable attorney's fees.
Sec. 92.0563(b).

TENANT'S JUDICIAL REMEDIES

There shall be a rebuttable presumption that the landlord acted without knowledge of the violation.

- The tenant shall have the burden of pleading and proving a knowing violation.
- If the lease is in writing and is not in violation of Section 92.006, the tenant's proof of a knowing violation must be clear and convincing.
- A mutual agreement for tenant repair under Subsection (g) of Section 92.0561 is not a violation of Section 92.006.
Sec. 92.0563. TENANT'S JUDICIAL REMEDIES

Jurisdiction

(c) The justice, county, and district courts have concurrent jurisdiction in an action under Subsection (a).

(d) If a suit is filed in a justice court requesting relief under Subsection (a), the justice court shall conduct a hearing on the request not earlier than the sixth day after the date of service of citation and not later than the 10th day after that date. (REPEALED – Eff. August 31, 2013)
Sec. 92.0563. TENANT'S JUDICIAL REMEDIES - Jurisdiction

(e) A justice court may not award a judgment under this section, including an order of repair, that exceeds $10,000, excluding interest and costs of court.

(f) An appeal of a judgment of a justice court under this section takes precedence in county court and may be held at any time after the eighth day after the date the transcript is filed in the county court. An owner of real property who files a notice of appeal of a judgment of a justice court to the county court perfects the owner's appeal and stays the effect of the judgment without the necessity of posting an appeal bond.
Sec. 92.060.
AGENTS FOR DELIVERY OF NOTICE

A managing agent, leasing agent, or resident manager is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter.
Sec. 92.003(b). AGENTS FOR DELIVERY OF SERVICE OF PROCESS

• If the management company name and business street address has been give to the tenant then the management company is the sole agent for service of process.
Sec. 92.003(c). AGENTS FOR DELIVERY OF SERVICE OF PROCESS

• If the management company name and business street address has not been given to the tenant and if the owners name and business street address has been given to the tenant then the owner is proper for service of process.
Sec. 92.003(c). AGENTS FOR DELIVERY OF SERVICE OF PROCESS

• If neither the management company name and business street address or the owners name and business street address has been give to the tenant, then the owner’s management company, on-premises manager, or rent collector is the owner’s authorized agent for service of process.
Sec. 92.061. EFFECT ON OTHER RIGHTS

• The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of existing common law and other statutory law warranties and duties of landlords for maintenance, repair, security, habitability, and nonretaliation, and remedies of tenants for a violation of those warranties and duties.
Sec. 92.061. EFFECT ON OTHER RIGHTS

- Otherwise, this subchapter does not affect any other right of a landlord or tenant under contract, statutory law, or common law that is consistent with the purposes of this subchapter or any right a landlord or tenant may have to bring an action for personal injury or property damage under the law of this state.

- This subchapter does not impose obligations on a landlord or tenant other than those expressly stated in this subchapter.
Secs. 92.054 - 92.055

TWO SPECIFIC SITUATIONS

CASUALTY LOSS

CLOSING THE RENTAL PREMISES
Sec. 92.054

CASUALTY LOSS
Sec. 92.054. CASUALTY LOSS

(a) If a condition results from an insured casualty loss, such as fire, smoke, hail, explosion, or a similar cause, the period for repair does not begin until the landlord receives the insurance proceeds.
Sec. 92.054(b). CASUALTY LOSS: TOTALLY UNUSABLE PREMISES

If after a casualty loss the rental premises are as a practical matter **totally unusable** for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant then - Either the landlord or the tenant may terminate the lease by giving written notice to the other any time before repairs are completed.
Sec. 92.054(b). CASUALTY LOSS: TOTALLY UNUSABLE PREMISES

If the lease is terminated:

the tenant is entitled only to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law.
Sec. 92.054(c). CASUALTY LOSS: PARTIALLY UNUSABLE PREMISES

If after a casualty loss the rental premises are partially unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, then the tenant is entitled to reduction in the rent in an amount proportionate to the extent the premises are unusable because of the casualty, but only on judgment of a county or district court.

A landlord and tenant may agree otherwise in a written lease.
Sec. 92.055

CLOSING THE RENTAL PREMISES
Sec. 92.055. CLOSING THE RENTAL PREMISES.

(a) A landlord may close a rental unit at any time by giving written notice by certified mail, return receipt requested, to the tenant and to the local health officer and local building inspector, if any, stating that:

• (1) the landlord is terminating the tenancy as soon as legally possible; and

• (2) after the tenant moves out the landlord will either immediately demolish the rental unit or no longer use the unit for residential purposes.
Sec. 92.055.
CLOSING THE RENTAL PREMISES.

(b) After a tenant receives the notice and moves out:

- (1) the local health officer or building inspector may not allow occupancy of or utility service by separate meter to the rental unit until the officer certifies that he knows of no condition that materially affects the physical health or safety of an ordinary tenant; and

- (2) the landlord may not allow re-occupancy or reconnection of utilities by separate meter within six months after the date the tenant moves out.
Sec. 92.055.
CLOSING THE RENTAL PREMISES.

(c) If the landlord gives the tenant the notice closing the rental unit:

(1) before the tenant gives a repair notice to the landlord,

the remedies of this subchapter do not apply;
Sec. 92.055. CLOSING THE RENTAL PREMISES.

(c) If the landlord gives the tenant the notice closing the rental unit:

(2) after the tenant gives a repair notice to the landlord but before the landlord has had a reasonable time to make repairs,

the tenant is entitled only to the remedies under Subsection (d) [moving costs, pro rata rent refund, return security deposit] of this section and Subdivisions (3)[civil penalty], (4)[actual damages], and (5) [court costs and attorney’s fees] of Subsection (a) of Section 92.0563;
Sec. 92.055.
CLOSING THE RENTAL PREMISES.

(c) If the landlord gives the tenant the notice closing the rental unit:

(3) after the tenant gives a repair notice to the landlord and after the landlord has had a reasonable time to make repairs, ...

the tenant is entitled only to the remedies under Subsection (d) [moving costs, pro rata rent refund, return security deposit] of this section and Subdivisions (3) [civil penalty], (4) [actual damages], and (5) [court costs and attorney’s fees] of Subsection (a) of Section 92.0563;

Note: Sections (c)(2) and (c)(3) read the same.
Sec. 92.055.
CLOSING THE RENTAL PREMISES.

(d) If the landlord closes the rental unit after the tenant gives the landlord a notice to repair and the 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 pro rata portion of the tenant's rent from the date the tenant moves out, and

if otherwise required by law, return the tenant's security deposit.
(e) A landlord who violates Subsection (b) or (d) is liable to the tenant for an amount equal to the total of one month's rent plus $100 and attorney's fees.

(f) The closing of a rental unit does not prohibit the occupancy of other apartments, nor does this subchapter prohibit occupancy of or utility service by master or individual meter to other rental units in an apartment complex that have not been closed under this section. If another provision of this subchapter conflicts with this section, this section controls.
Sec. 92.058. LANDLORD REMEDY FOR TENANT VIOLATION

(a) If the tenant withholds rents, causes repairs to be performed, or makes rent deductions for repairs in violation of this subchapter, the landlord may recover actual damages from the tenant. If, after a landlord has notified a tenant in writing of (1) the illegality of the tenant's rent withholding or the tenant's proposed repair and (2) the penalties of this subchapter, the tenant withholds rent, causes repairs to be performed, or makes rent deductions for repairs in bad faith violation of this subchapter, the landlord may recover from the tenant a civil penalty of one month's rent plus $500.

(b) Notice under this section must be in writing and may be given in person, by mail, or by delivery to the premises.
Sec. 92.058. LANDLORD REMEDY FOR TENANT VIOLATION

• (c) The landlord has the burden of pleading and proving, by clear and convincing evidence, that the landlord gave the tenant the required notice of the illegality and the penalties and that the tenant's violation was done in bad faith. In any litigation under this subsection, the prevailing party shall recover reasonable attorney's fees from the non-prevailing party.
RULE 509. REPAIR AND REMEDY
RULE 509.1. APPLICABILITY OF RULE

- Rule 509 applies to a lawsuit filed in a justice court by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant.
RULE 509.2. CONTENTS OF PETITION; COPIES; FORMS AND AMENDMENTS

(a) Contents of Petition. The petition must be in writing and must include the following:

• (1) the street address of the residential rental property;
• (2) a statement indicating whether the tenant has received in writing the name and business street address of the landlord and landlord's management company;
• (3) to the extent known and applicable, 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;
RULE 509.2. CONTENTS OF PETITION; COPIES; FORMS AND AMENDMENTS

(a) Contents of Petition. The petition must be in writing and must include the following:

(4) for all notices the tenant gave to the landlord requesting that the condition be repaired or remedied:

– (A) the date of the notice;
– (B) the name of the person to whom the notice was given or the place where the notice was given;
– (C) whether the tenant's lease is in writing and requires written notice;
– (D) whether the notice was in writing or oral;
– (E) whether any written notice was given by certified mail, return receipt requested, or by registered mail; and
– (F) whether the rent was current or had been timely tendered at the time notice was given;
RULE 509.2. CONTENTS OF PETITION; COPIES; FORMS AND AMENDMENTS

(a) Contents of Petition. The petition must be in writing and must include the following:

(5) a description of the property condition materially affecting the physical health or safety of an ordinary tenant that the tenant seeks to have repaired or remedied;

• (6) 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;
RULE 509.2. CONTENTS OF PETITION; COPIES; FORMS AND AMENDMENTS

(a) Contents of Petition. The petition must be in writing and must include the following: ...

(7) if the petition includes a request to reduce the rent:
   – (A) 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
   – (B) the amount of the requested rent reduction and the date it should begin;

(8) a statement that the total relief requested does not exceed $10,000, excluding interest and court costs but including attorney's fees; and

(9) the tenant's name, address, and telephone number.
(b) Copies. The tenant must provide the court with copies of the petition and any attachments to the petition for service on the landlord.

(c) Forms and Amendments. A petition substantially in the form promulgated by the Supreme Court is sufficient. A suit may not be dismissed for a defect in the petition unless the tenant is given an opportunity to correct the defect and does not promptly correct it.
RULE 509.3. CITATION: ISSUANCE; APPEARANCE DATE; ANSWER

• (a) **Issuance.** When the tenant files a written petition with a justice court, the judge must immediately issue citation directed to the landlord, commanding the landlord to appear before such judge at the time and place named in the citation.
(b) Appearance Date; Answer. The appearance date on the citation must not be less than 10 days nor more than 21 days after the petition is filed. For purposes of this rule, the appearance date on the citation is the trial date. The landlord may, but is not required to, file a written answer on or before the appearance date.
RULE 509.4.
SERVICE AND RETURN OF CITATION
(a) Service and Return of Citation. The sheriff, constable, or other person authorized by Rule 501.2 who receives the citation must serve the citation by delivering a copy of it, along with a copy of the petition and any attachments, to the landlord at least 6 days before the appearance date. At least one day before the appearance date, the person serving the citation must file a return of service with the court that issued the citation. The citation must be issued, served, and returned in like manner as ordinary citations issued from a justice court.
RULE 509.4.
ALTERNATIVE SERVICE OF CITATION

(b) Alternative Service of Citation.

(1) If the petition does not include the landlord's name and business street address, or if, after making diligent efforts on at least two occasions, the officer or authorized person is unsuccessful in serving the citation on the landlord under (a), the officer or authorized person must serve the citation by delivering a copy of the citation, petition, and any attachments to:

- (A) 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
- (B) if (b)(1)(A) does not apply and the tenant has not received the landlord's name and business street address in writing, the landlord's authorized agent for service of process, which may be the landlord's management company, on-premise manager, or rent collector serving the residential rental property.
(b) Alternative Service of Citation.

...  
(2) If the officer or authorized person is unsuccessful in serving citation under (b)(1) after making diligent efforts on at least two occasions at either the business street address of the landlord's management company, if (b)(1)(A) applies, or at each available business street address of the landlord's authorized agent for service of process, if (b)(1)(B) applies, the officer or authorized person must execute and file in the justice court a sworn statement that the officer or authorized person made diligent efforts to serve the citation on at least two occasions at all available business street addresses of the landlord and, to the extent applicable, the landlord's management company, on-premises manager, and rent collector serving the residential rental property, providing the times, dates, and places of each attempted service. The judge may then authorize the officer or authorized person to serve citation by:
(b) Alternative Service of Citation.

(2) ...

(A) delivering a copy of the citation, petition, and any attachments to someone over the age of 16 years, at any business street address listed in the petition, or, if nobody answers the door at a business street address, either placing the citation, petition, and any attachments through a door mail chute or slipping them under the front door, and if neither of these latter methods is practical, affixing the citation, petition, and any attachments to the front door or main entry to the business street address;
RULE 509.4.

ALTERNATIVE SERVICE OF CITATION

(b) Alternative Service of Citation.

(2) …

(B) within 24 hours of complying with (b)(2)(A), sending by first class mail a true copy of the citation, petition, and any attachments addressed to the landlord at the landlord's business street address provided in the petition; and

(C) noting on the return of the citation the date of delivery under (b)(2)(A) and the date of mailing under (b)(2)(B).
(a) *Docketing and Trial*. The case must be docketed and tried as other cases. The judge may develop the facts of the case in order to ensure justice.
RULE 509.5. FAILURE TO APPEAR

(b) Failure to Appear.

• (1) If the tenant appears at trial and the landlord has been duly served and fails to appear at trial, the judge may proceed to hear evidence. If the tenant establishes that the tenant is entitled to recover, the judge must render judgment against the landlord in accordance with the evidence.

• (2) If the tenant fails to appear for trial, the judge may dismiss the lawsuit.
(a) *Amount.* 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. Any party who prevails in a lawsuit brought under these rules may recover the party's court costs and reasonable attorney's fees as allowed by law.
(b) *Form and Content.*

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

(2) In the judgment, the judge may:

(A) order the landlord to take reasonable action to repair or remedy the condition;

(B) 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;

(C) award a civil penalty of one month's rent plus $500;

(D) award the tenant's actual damages; and

(E) award court costs and attorney's fees, excluding any attorney's fees for a claim for damages relating to a personal injury.
(b) *Form and Content.* ...

(3) 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.
(b) Form and Content. ... 

(4) If the judge orders a reduction in the tenant's rent, the judgment must state:

(A) the amount of the rent the tenant must pay, if any;
(B) the frequency with which the tenant must pay the rent;
(C) the condition justifying the reduction of rent;
(D) the effective date of the order reducing rent;
(E) that the order reducing rent will terminate on the date the condition is repaired or remedied; and
(F) 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.
(c) Issuance and Service. The judge must issue the judgment. 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 the landlord furnishes to the court in writing. Unless the judge serves the landlord in open court or by other means provided in Rule 501.4, the sheriff, constable, or other authorized person who serves the landlord must promptly file a return of service in the justice court.
(d) *Failure to Comply.* If the landlord fails to comply with an order to repair or remedy a condition or reduce the tenant's rent, the failure is grounds for citing the landlord for contempt of court under Section 21.002 of the Texas Government Code.
(c) The punishment for contempt of a justice court or municipal court is a fine of not more than $100 or confinement in the county or city jail for not more than three days, or both such a fine and confinement in jail.
RULE 509.7. COUNTERCLAIMS

• Counterclaims and the joinder of suits against third parties are not permitted in suits under these rules. Compulsory counterclaims may be brought in a separate suit. Any potential causes of action, including a compulsory counterclaim, that are not asserted because of this rule are not precluded.
RULE 509.8. APPEAL: TIME AND MANNER

• (a) *Time and Manner*. Either party may appeal the decision of the justice court to a statutory county court or, if there is no statutory county court with jurisdiction, a county court or district court with jurisdiction by filing a written notice of appeal with the justice court within 21 days after the date the judge signs the judgment. 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 set out in this rule.
RULE 509.8. APPEAL: PERFECTION

• (b) *Perfection*. The posting of an appeal bond is not required for an appeal under this rule, and the appeal is considered perfected with the filing of a notice of appeal. Otherwise, the appeal is in the manner provided by law for appeal from a justice court.
(c) **Effect.** The timely filing of a notice of appeal stays the enforcement of any order to repair or remedy a condition or reduce the tenant's rent, as well as any other actions.
RULE 509.8. APPEAL: COSTS

(d) Costs. The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.
• (e) *Trial on Appeal.* On appeal, the parties are entitled to a 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. Either party is entitled to trial by jury on timely request and payment of a fee, if required. An appeal of a judgment of a justice court under these rules 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 509.9. EFFECT OF WRIT OF POSSESSION

• If a judgment for the landlord for possession of the residential rental property becomes final, any order to repair or remedy a condition is vacated and unenforceable.
TEXAS PROPERTY CODE

CHAPTER 92. RESIDENTIAL TENANCIES

SUBCHAPTER H. RETALIATION
Sec. 92.331. RETALIATION BY LANDLORD

(a) A landlord may not retaliate against a tenant by taking an action described by Subsection (b) because the tenant:

(1) in good faith exercises or attempts to exercise against a landlord a right or remedy granted to the tenant by lease, municipal ordinance, or federal or state statute;
Sec. 92.331. RETALIATION BY LANDLORD

(2) gives a landlord a notice to repair or exercise a remedy under this chapter; or
Sec. 92.331. RETALIATION BY LANDLORD

(3) complains to a governmental entity responsible for enforcing building or housing codes, a public utility, or a civic or nonprofit agency, and the tenant:

• (A) claims a building or housing code violation or utility problem; and

• (B) believes in good faith that the complaint is valid and that the violation or problem occurred.
Sec. 92.331. RETALIATION BY LANDLORD

(b) A landlord may not, within six months after the date of the tenant's action under Subsection retaliate against the tenant by:

(1) filing an eviction proceeding, except for the grounds stated by Section 92.332;
Sec. 92.331. RETALIATION BY LANDLORD

• (2) depriving the tenant of the use of the premises, except for reasons authorized by law;
Sec. 92.331. RETALIATION BY LANDLORD

• (3) decreasing services to the tenant;
Sec. 92.331. RETALIATION BY LANDLORD

• (4) increasing the tenant's rent or terminating the tenant's lease; or
(5) engaging, in bad faith, in a course of conduct that materially interferes with the tenant's rights under the tenant's lease.
Sec. 92.332. NONRETAILIATION

(a) The landlord is not liable for retaliation under this subchapter if the landlord proves that the action was not made for purposes of retaliation, nor is the landlord liable, unless the action violates a prior court order under Section 92.0563, for:

• (1) increasing rent under an escalation clause in a written lease for utilities, taxes, or insurance; or

• (2) increasing rent or reducing services as part of a pattern of rent increases or service reductions for an entire multi-dwelling project.
Sec. 92.332. NONRETLALIATION

(b) An eviction or lease termination based on the following circumstances, which are valid grounds for eviction or lease termination in any event, does not constitute retaliation:

• (1) the tenant is delinquent in rent when the landlord gives notice to vacate or files an eviction action;

• (2) the tenant, a member of the tenant's family, or a guest or invitee of the tenant intentionally damages property on the premises or by word or conduct threatens the personal safety of the landlord, the landlord's employees, or another tenant;
Sec. 92.332. NONRETAIATION

(b) An eviction or lease termination based on the following circumstances, which are valid grounds for eviction or lease termination in any event, does not constitute retaliation:

• (3) the tenant has materially breached the lease, other than by holding over, by an action such as violating written lease provisions prohibiting serious misconduct or criminal acts, except as provided by this section;

• (4) the tenant holds over after giving notice of termination or intent to vacate;
Sec. 92.332. NONRETAILATION  
(cont.)

• (5) the tenant holds over after the landlord gives notice of termination at the end of the rental term and the tenant does not take action under Section 92.331 until after the landlord gives notice of termination; or

• (6) the tenant holds over and the landlord's notice of termination is motivated by a good faith belief that the tenant, a member of the tenant's family, or a guest or invitee of the tenant might:

  (A) adversely affect the quiet enjoyment by other tenants or neighbors;

  (B) materially affect the health or safety of the landlord, other tenants, or neighbors; or

  (C) damage the property of the landlord, other tenants, or neighbors.
Sec. 92.333. TENANT REMEDIES: RETALITION

Tenant may recover:

- a civil penalty of one month's rent plus $500,
- actual damages,
- court costs, and reasonable attorney's fees in an action for recovery of property damages,
- moving costs,
- actual expenses,
- civil penalties,
- or declaratory or injunctive relief,

less any delinquent rents or other sums for which the tenant is liable to the landlord.
Sec. 92.333. TENANT REMEDIES.

- If the tenant's rent payment to the landlord is subsidized in whole or in part by a governmental entity, the civil penalty granted under this section shall reflect the fair market rent of the dwelling plus $500.
RETALIATION CASE

SIMS v. CENTURY KIEST APARTMENTS

ISSUE:
The principle question presented in this case is whether a former tenant has a cause of action against a former landlord who terminated the tenant’s periodic tenancy and evicted the tenant in retaliation for the tenant’s reporting of code violations to proper city authorities.
SIMS vs. CENTURY KIEST APARTMENTS

HOLDING:
The court held that retaliatory eviction is a legal wrong for which a separate action for damages will lie.
Sec. 92.335. EVICTION SUITS – Retaliation is a Defense

In an eviction suit, retaliation by the landlord under Section 92.331 is a defense and a rent deduction lawfully made by the tenant under this chapter is a defense for nonpayment of the rent to the extent allowed by this chapter.
Sec. 92.334. INVALID COMPLAINTS.

- (a) If a tenant files or prosecutes a suit for retaliatory action based on a complaint asserted under Section 92.331(a)(3), and the government building or housing inspector or utility company representative visits the premises and determines in writing that a violation of a building or housing code does not exist or that a utility problem does not exist, there is a rebuttable presumption that the tenant acted in bad faith.
Sec. 92.334. INVALID COMPLAINTS. LANDLORD'S REMEDIES

(b) If a tenant files or prosecutes a suit under this subchapter in bad faith,

• the landlord may recover possession of the dwelling unit

• recover from the tenant a civil penalty of one month's rent plus $500,

• court costs,

• and reasonable attorney's fees.

• If the tenant's rent payment to the landlord is subsidized in whole or in part by a governmental entity, the civil penalty granted under this section shall reflect the fair market rent of the dwelling plus $500.
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 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
OTHER “REPAIR-TYPE” ISSUES

• SECURITY DEVICES

• SMOKE ALARMS
Sec. 92.006. WAIVER ... OF DUTIES AND REMEDIES.

(a) A landlord's duty or a tenant's remedy concerning:

- security deposits,
- security devices,
- the landlord's disclosure of ownership and management,
- or
- utility cutoffs

... may not be waived.
Sec. 92.006. WAIVER ... OF DUTIES AND REMEDIES.

• A landlord's duty to install a smoke alarm may not be waived.

• A tenant may not waive a remedy for the landlord's non-installation or waive the tenant's limited right of installation and removal.
Sec. 92.006. WAIVER ... OF DUTIES AND REMEDIES.

The landlord's duty of inspection and repair of smoke alarms may be waived only by written agreement.
Sec. 92.006

EXPANSION OF DUTIES
Sec. 92.006. ... EXPANSION OF DUTIES AND REMEDIES.

(b) A landlord's duties and the tenant's remedies concerning:

• security devices,

• the landlord's disclosure of ownership and management, or

• smoke alarms

may be enlarged only by specific written agreement.
Security Devices


- A landlord is required to install specific types of locks on windows and doors in all rental units. Tex. Prop. Code § 92.153(a).
Tex. Prop. Code § 92.156

- Landlords are required to re-key locks 7 days from each tenant turnover date. Tex.

• 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.
Sec. 92.151.

• DEFINITIONS
Sec. 92.151. DEFINITIONS.

• (1) "Doorknob lock" means a lock in a doorknob, with the lock operated from the exterior by a key, card, or combination and from the interior without a key, card, or combination.
Sec. 92.151. DEFINITIONS.

• (2) "Door viewer" means a permanently installed device in an exterior door that allows a person inside the dwelling to view a person outside the door. The device must be:

  – (A) a clear glass pane or one-way mirror; or

  – (B) a peephole having a barrel with a one-way lens of glass or other substance providing an angle view of not less than 160 degrees.
Sec. 92.151. DEFINITIONS.

• (3) "Exterior door" means a door providing access from a dwelling interior to the exterior. The term includes a door between a living area and a garage but does not include a sliding glass door or a screen door.
(5) "Keyed dead bolt" means:

(A) a door lock not in the doorknob that:

(i) locks with a bolt into the doorjamb; and

(ii) is operated from the exterior by a key, card, or combination and from the interior by a knob or lever without a key, card, or combination; or

(B) a doorknob lock that contains a bolt with at least a one-inch throw.
"Keyless bolting device" means:

(A) with a bolt into a strike plate screwed into the portion of the doorjamb

(B) by a drop bolt system
"Keyless bolting device" exclusions

The term "keyless bolting device" does not include a chain latch, flip latch, surface-mounted slide bolt, mortise door bolt, surface-mounted barrel bolt, surface-mounted swing bar door guard, spring-loaded nightlatch, foot bolt, or other lock or latch; or
“Rekey”

(10) "Rekey" means to change or alter a security device that is operated by a key, card, or combination so that a different key, card, or combination is necessary to operate the security device.
"Tenant turnover date"

"Tenant turnover date" means the date a tenant moves into a dwelling under a lease after all previous occupants have moved out.

The term does not include dates of entry or occupation not authorized by the landlord.
Sec. 92.153. SECURITY DEVICES REQUIRED WITHOUT NECESSITY OF TENANT REQUEST.

(a) ......without necessity of request by the tenant, a dwelling must be equipped with:

- (1) a window latch on each exterior window of the dwelling;
- (2) a doorknob lock or keyed dead bolt on each exterior door;
- (3) a sliding door pin lock on each exterior sliding glass door of the dwelling;
- (4) a sliding door handle latch or a sliding door security bar on each exterior sliding glass door of the dwelling; and
- (5) a keyless bolting device and a door viewer on each exterior door of the dwelling.
Exclusions – “55”

(e) A keyless bolting device is not required to be installed at the landlord's expense on an exterior door if:

• (1) the dwelling is part of a multiunit complex in which the majority of dwelling units are leased to tenants who are over 55 years of age or who have a physical or mental disability;

• (2) a tenant or occupant in the dwelling is over 55 years of age or has a physical or mental disability; and

• (3) the landlord is expressly required or permitted to periodically check on the well-being or health of the tenant as a part of a written lease or other written agreement.
Exclusion – Over “55” Requested

(f) A keyless bolting device is not required to be installed at the landlord's expense if a tenant or occupant in the dwelling is over 55 years of age or has a physical or mental disability, the tenant requests, in writing, that the landlord deactivate or not install the keyless bolting device, and the tenant certifies in the request that the tenant or occupant is over 55 years of age or has a physical or mental disability.

• The request must be a separate document and may not be included as part of a lease agreement.
• A landlord is not exempt as provided by this subsection if the landlord knows or has reason to know that the requirements of this subsection are not fulfilled.
Exclusion- “1 Keyed – All Keyless”

(g) A keyed dead bolt or a doorknob lock is not required to be installed at the landlord's expense on an exterior door if at the time the tenant agrees to lease the dwelling:

• (1) at least one exterior door usable for normal entry into the dwelling has both a keyed dead bolt and a keyless bolting device, installed in accordance with the height, strike plate, and throw requirements of Section 92.154; and

• (2) all other exterior doors have a keyless bolting device installed in accordance with the height, strike plate, and throw requirements of Section 92.154.
Sec. 92.154. HEIGHT, BOLTING DEVICE.

(a) A keyed dead bolt or a keyless bolting device required by this subchapter must be installed at a height of 36 to 48 inches from the floor, if installed on or after September 1, 1993.
Sec. 92.156. REKEYING OR CHANGE OF SECURITY DEVICES.

(a) A security device operated by a key, card, or combination shall be rekeyed by the landlord at the landlord's expense not later than the seventh day after each tenant turnover date.
Sec. 92.156. REKEYING OR CHANGE OF SECURITY DEVICES.

(b) A landlord shall perform additional rekeying or change a security device at the tenant's expense if requested by the tenant.

• A tenant may make an unlimited number of requests under this subsection.
Sec. 92.156. REKEYING OR CHANGE OF SECURITY DEVICES.

(c) The expense of rekeying security devices for purposes of the use or change of the landlord's master key must be paid by the landlord.
Sec. 92.157. SECURITY DEVICES REQUESTED BY TENANT.

(a) At a tenant's request made at any time, a landlord, at the tenant's expense, shall install:

(1) a keyed dead bolt on an exterior door if the door has:
   (A) a doorknob lock but not a keyed dead bolt; or
   (B) a keyless bolting device but not a keyed dead bolt or doorknob lock; and

(2) a sliding door pin lock or sliding door security bar if the door is an exterior sliding glass door without a sliding door pin lock or sliding door security bar.
T May Request- Immediate Install

(c) If a security device required by Section 92.153 to be installed on or after January 1, 1995, without necessity of a tenant's request has not been installed by the landlord, the tenant may request the landlord to immediately install it, and the landlord shall immediately install it at the landlord's expense.
Sec. 92.158. LANDLORD'S DUTY TO REPAIR OR REPLACE SECURITY DEVICE.

During the lease term and any renewal period, a landlord shall repair or replace a security device on request or notification by the tenant that the security device is inoperable or in need of repair or replacement.
Sec. 92.159. WHEN TENANT'S REQUEST OR NOTICE MUST BE IN WRITING.

A tenant's request or notice under this subchapter may be given orally unless the tenant has a written lease that requires the request or notice to be in writing and that requirement is underlined or in boldfaced print in the lease.
Sec. 92.161. COMPLIANCE WITHIN REASONABLE TIME.

(a) Except as provided by Subsections (b) and (c), a landlord must comply with a tenant's request for rekeying, changing, installing, repairing, or replacing a security device under Section 92.156, 92.157, or 92.158 within a reasonable time.

(b) A reasonable time for purposes of this subsection is presumed to be not later than the seventh day after the date the request is received by the landlord.
• (b) If within the time allowed under Section 92.162(c) a landlord requests advance payment of charges that the landlord is entitled to collect under that section, the landlord shall comply with a tenant's request under Section 92.156(b), 92.157(a), or 92.157(b) within a reasonable time. A reasonable time for purposes of this subsection is presumed to be not later than the seventh day after the date a tenant's advance payment is received by the landlord, except as provided by Subsection (c).
Reasonable Time – 72 Hours

(c) A reasonable time for purposes of Subsections (a) and (b) is presumed to be not later than 72 hours after the time of receipt of the tenant's request and any required advance payment if at the time of making the request the tenant informed the landlord that:

• (1) an unauthorized entry occurred or was attempted in the tenant's dwelling;

• (2) an unauthorized entry occurred or was attempted in another unit in the multiunit complex in which the tenant's dwelling is located during the two months preceding the date of the request; or

• (3) a crime of personal violence occurred in the multiunit complex in which the tenant's dwelling is located during the two months preceding the date of the request.
Rebuttable Presumption

(d) A landlord may rebut the presumption provided by Subsection (a) or (b) if despite the diligence of the landlord:

(1) the landlord did not know of the tenant's request, without the fault of the landlord;

(2) materials, labor, or utilities were unavailable; or

(3) a delay was caused by circumstances beyond the landlord's control, including the illness or death of the landlord or a member of the landlord's immediate family.
(e) This section does not apply to a landlord's duty to install or rekey, without necessity of a tenant's request, a security device under Section 92.153 or 92.156(a).
Sec. 92.162. PAYMENT OF CHARGES; LIMITS ON AMOUNT CHARGED.

• (a) A landlord may not require a tenant to pay for repair or replacement of a security device due to normal wear and tear. A landlord may not require a tenant to pay for other repairs or replacements of a security device except as provided by Subsections (b), (c), and (d).
(b) A landlord may require a tenant to pay for repair or replacement of a security device if an underlined provision in a written lease authorizes the landlord to do so and the repair or replacement is necessitated by misuse or damage by the tenant, a member of the tenant's family, an occupant, or a guest, and not by normal wear and tear.
Sec. 92.163. REMOVAL OR ALTERATION OF SECURITY DEVICE BY TENANT.

• A security device that is installed, changed, or rekeyed under this subchapter becomes a fixture of the dwelling. Except as provided by Section 92.164(a)(1) or 92.165(1) regarding the remedy of repair-and-deduct, a tenant may not remove, change, rekey, replace, or alter a security device or have it removed, changed, rekeyed, replaced, or altered without permission of the landlord.
If a landlord does not comply with Section 92.153 or 92.156(a) regarding installation or rekeying of a security device, the tenant may:

1. install or rekey the security device as required by this subchapter and deduct the reasonable cost of material, labor, taxes, and extra keys from the tenant's next rent payment, in accordance with Section 92.166;
(2) serve a written request for compliance on the landlord, and, except as provided by Subsections (b) and (c), if the landlord does not comply on or before the third day after the date the notice is received, unilaterally terminate the lease without court proceedings;
92.164(a) File Suit

(3) file suit against the landlord without serving a request for compliance and obtain a judgment for:

• (A) a court order directing the landlord to comply, if the tenant is in possession of the dwelling;
• (B) the tenant's actual damages;
• (C) court costs; and
• (D) attorney's fees except in suits for recovery of property damages, personal injuries, or wrongful death; and
(4) serve a written request for compliance on the landlord, and, except as provided by Subsections (b) and (c), if the landlord does not comply on or before the third day after the date the notice is received, file suit against the landlord and obtain a judgment for:

- (A) a court order directing the landlord to comply and bring all dwellings owned by the landlord into compliance, if the tenant serving the written request is in possession of the dwelling;
- (B) the tenant's actual damages;
- (C) punitive damages if the tenant suffers actual damages;
- (D) a civil penalty of one month's rent plus $500;
- (E) court costs; and
- (F) attorney's fees except in suits for recovery of property damages, personal injuries, or wrongful death.
(b) A tenant may not unilaterally terminate the lease under Subsection (a)(2) or file suit against the landlord to obtain a judgment under Subsection (a)(4) unless the landlord does not comply on or before the seventh day after the date the written request for compliance is received if the lease includes language underlined or in boldface print that in substance provides the tenant with notice...
Sec. 92.1641. LANDLORD'S DEFENSES RELATING TO INSTALLING OR REKEYING CERTAIN SECURITY DEVICES.

The landlord has a defense to liability under Section 92.164 if:

• (1) the tenant has not fully paid all rent then due from the tenant on the date the tenant gives a request under Subsection (a) of Section 92.157 or the notice required by Section 92.164; or

• (2) on the date the tenant terminates the lease or files suit the tenant has not fully paid costs requested by the landlord and authorized by Section 92.162.
Sec. 92.165. TENANT REMEDIES FOR OTHER LANDLORD VIOLATIONS.

If a landlord does not comply with a tenant's request regarding rekeying, changing, adding, repairing, or replacing a security device under Section 92.156(b), 92.157, or 92.158 in accordance with the time limits and other requirements of this subchapter, the tenant may:

• (1) install, repair, change, replace, or rekey the security devices as required by this subchapter and deduct the reasonable cost of material, labor, taxes, and extra keys from the tenant's next rent payment in accordance with Section 92.166;

• (2) unilaterally terminate the lease without court proceedings; and
Sec. 92.165. TENANT REMEDIES FOR OTHER LANDLORD VIOLATIONS.

If a landlord does not comply with a tenant's request regarding rekeying, changing, adding, repairing, or replacing a security device under Section 92.156(b), 92.157, or 92.158 in accordance with the time limits and other requirements of this subchapter, the tenant may: ...

(3) file suit against the landlord and obtain a judgment for:
   (A) a court order directing the landlord to comply, if the tenant is in possession of the dwelling;
   (B) the tenant's actual damages;
   (C) punitive damages if the tenant suffers actual damages and the landlord's failure to comply is intentional, malicious, or grossly negligent;
   (D) a civil penalty of one month's rent plus $500;
   (E) court costs; and
   (F) attorney's fees except in suits for recovery of property damages, personal injuries, or wrongful death.
Sec. 92.166. NOTICE OF TENANT'S DEDUCTION OF REPAIR COSTS FROM RENT.

• (a) A tenant shall notify the landlord of a rent deduction attributable to the tenant's installing, repairing, changing, replacing, or rekeying of a security device under Section 92.164(a)(1) or 92.165(1) after the landlord's failure to comply with this subchapter. The notice must be given at the time of the reduced rent payment.

• (b) Unless otherwise provided in a written lease, a tenant shall provide one duplicate of the key to any key-operated security device installed or rekeyed by the tenant under Section 92.164(a)(1) or 92.165(1) within a reasonable time after the landlord's written request for the key.
Sec. 92.167. LANDLORD'S DEFENSES RELATING TO COMPLIANCE WITH TENANT'S REQUEST.

• (a) A landlord has a defense to liability under Section 92.165 if on the date the tenant terminates the lease or files suit the tenant has not fully paid costs requested by the landlord and authorized by this subchapter.
Sec. 92.169. AGENT FOR DELIVERY OF NOTICE.

• A managing agent or an agent to whom rent is regularly paid, whether residing or maintaining an office on-site or off-site, is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter.
Sec. 92.170. EFFECT ON OTHER LANDLORD DUTIES AND TENANT REMEDIES.

The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of common law, other statutory law, and local ordinances relating to a residential landlord's duty to install, change, rekey, repair, or replace security devices and a tenant's remedies for the landlord's failure to install, change, rekey, repair, or replace security devices.
Smoke Alarms
Definitions

• TPC 92.251
TPC 92.251

• (3) "Smoke alarm" means a device designed to detect and to alert occupants of a dwelling unit to the visible and invisible products of combustion by means of an audible alarm.
Sec. 92.252. APPLICATION OF OTHER LAW; MUNICIPAL REGULATION.

• (a) The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of common law, other statutory law, and local ordinances regarding a residential landlord's duty to install, inspect, or repair a fire extinguisher or smoke alarm in a dwelling unit.
Sec. 92.253. EXEMPTIONS.

(a) This subchapter does not apply to:

• (1) a dwelling unit that is occupied by its owner, no part of which is leased to a tenant;

• (2) a dwelling unit in a building five or more stories in height in which smoke alarms are required or regulated by local ordinance; or

• (3) a nursing or convalescent home licensed by the Department of State Health Services and certified to meet the Life Safety Code under federal law and regulations.
Sec. 92.254. SMOKE ALARM.

(a) A smoke alarm must be:

- (1) designed to detect both the visible and invisible products of combustion;

- (2) designed with an alarm audible to a person in the bedrooms it serves; and

- (3) tested and listed for use as a smoke alarm by Underwriters Laboratories, Inc., Factory Mutual Research Corporation, or United States Testing Company, Inc.

(a-1) If requested by a tenant as an accommodation for a person with a hearing-impairment disability or as required by law as a reasonable accommodation for a person with a hearing-impairment disability, a smoke alarm must, in addition to complying with Subsection (a), be capable of alerting a hearing-impaired person in the bedrooms it serves.
Sec. 92.254. SMOKE ALARM.

(b) Except as provided by Section 92.255(b), a smoke alarm may be powered by:

- battery,
- alternating current, or
- other power source as required by local ordinance.
Sec. 92.255. INSTALLATION AND LOCATION.

(a) A landlord shall install at least one smoke alarm in each separate bedroom in a dwelling unit.
Sec. 92.255. INSTALLATION AND LOCATION.

In addition:

(1) if the dwelling unit is designed to use a single room for dining, living, and sleeping, the smoke alarm must be located inside the room;

(2) if multiple bedrooms are served by the same corridor, at least one smoke alarm must be installed in the corridor in the immediate vicinity of the bedrooms; and

(3) if the dwelling unit has multiple levels, at least one smoke alarm must be located on each level.
Sec. 92.2571. ALTERNATIVE COMPLIANCE.

A landlord complies with the requirements of this subchapter relating to the provision of smoke alarms in the dwelling unit if the landlord:

• (1) has a fire detection device, as defined by Section 6002.002, Insurance Code, that includes a fire alarm device, as defined by Section 6002.002, Insurance Code, installed in a dwelling unit; or

• (2) for a dwelling unit that is a one-family or two-family dwelling unit, installs smoke detectors in compliance with Chapter 766, Health and Safety Code.
Sec. 92.258. INSPECTION AND REPAIR.

• (a) The landlord shall inspect and repair a smoke alarm according to this section.

• (b) The landlord shall determine that the smoke alarm is in good working order at the beginning of the tenant's possession by testing the smoke alarm with smoke, by operating the testing button on the smoke alarm, or by following other recommended test procedures of the manufacturer for the particular model.
Sec. 92.258. INSPECTION AND REPAIR.

• (c) During the term of a lease or during a renewal or extension, the landlord has a duty to inspect and repair a smoke alarm, but only if the tenant gives the landlord notice of a malfunction or requests to the landlord that the smoke alarm be inspected or repaired.

• This duty does not exist with respect to damage or a malfunction caused by the tenant, the tenant's family, or the tenant's guests or invitees during the term of the lease or a renewal or extension, except that the landlord has a duty to repair or replace the smoke alarm if the tenant pays in advance the reasonable repair or replacement cost, including labor, materials, taxes, and overhead.
Sec. 92.258. INSPECTION AND REPAIR.

• (d) The landlord must comply with the tenant's request for inspection or repair of a smoke alarm within a reasonable time, considering the availability of material, labor, and utilities.

• (e) The landlord has met the duty to inspect and repair if the smoke alarm is in good working order after the landlord tests the smoke alarm with smoke, operates the testing button on the smoke alarm, or follows other recommended test procedures of the manufacturer for the particular model.
Sec. 92.258. INSPECTION AND REPAIR.

• (f) The landlord is not obligated to provide batteries for a battery-operated smoke alarm after a tenant takes possession if the smoke alarm was in good working order at the time the tenant took possession.

• (g) A smoke alarm that is in good working order at the beginning of a tenant's possession is presumed to be in good working order until the tenant requests repair of the smoke alarm as provided by this subchapter.
Sec. 92.259. LANDLORD'S FAILURE TO INSTALL, INSPECT, OR REPAIR.

(a) A landlord is liable according to this subchapter if:

• (1) the landlord did not install a smoke alarm at the time of initial occupancy by the tenant as required by this subchapter or a municipal ordinance permitted by this subchapter; or ...
Sec. 92.259. LANDLORD'S FAILURE TO INSTALL, INSPECT, OR REPAIR.

(a) A landlord is liable according to this subchapter if: ...

• (2) the landlord does not install, inspect, or repair the smoke alarm on or before the seventh day after the date the tenant gives the landlord written notice that the tenant may exercise his remedies under this subchapter if the landlord does not comply with the request within seven days.
Sec. 92.259. LANDLORD'S FAILURE TO INSTALL, INSPECT, OR REPAIR.

(b) If the tenant gives notice under Subsection (a)(2) and the tenant's lease is in writing, the lease may require the tenant to make initial request in writing.
Sec. 92.260. TENANT REMEDIES.

A tenant of a landlord who is liable under Section 92.259 may obtain or exercise one or more of the following remedies:

• (1) a court order directing the landlord to comply with the tenant's request if the tenant is in possession of the dwelling unit;

• (2) a judgment against the landlord for damages suffered by the tenant because of the landlord's violation;

• (3) a judgment against the landlord for a civil penalty of one month's rent plus $100 if the landlord violates Section 92.259(a)(2);

• (4) court costs;

• (5) attorney's fees in an action under Subdivision (1) or (3); and

• (6) unilateral termination of the lease without a court proceeding if the landlord violates Section 92.259(a)(2).
Sec. 92.261. LANDLORD'S DEFENSES.

The landlord has a defense to liability under Section 92.259 if:

• (1) on the date the tenant gives the notice required by Section 92.259 the tenant has not paid all rent due from the tenant; or

• (2) on the date the tenant terminates the lease or files suit the tenant has not fully paid costs requested by the landlord and authorized by Section 92.258.
Sec. 92.262. AGENTS FOR DELIVERY OF NOTICE.

- A managing or leasing agent, whether residing or maintaining an office on-site or off-site, is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter.
IWS

COMMERCIAL TENANCY
LANDLORD’S SERVICES (Pre-Davidow)

- In commercial leases.....at common law before "Davidow" the landlord's sole obligation was to place the tenant in the premises and accept the rent (unless one of the common-law exceptions applied or unless certain services were expressly agreed to be provided by landlord.)

Rule was: CAVEAT EMPTOR; TENANT TAKES PREMISES AS IS!
REPAIRS AND MAINTENANCE – COMMERCIAL LEASE (Pre-Davidow)

• A covenant by the landlord to make repairs is never implied, even though the landlord may make some repairs during the term.  

_Yarbrough v.-Booher, 141 Tex. 420, 174 S.W.2d 47, 150 A.L.R. 1369 (1943)_
Gratuitous Repairs Performed Negligently

• When the landlord, although he may be under no obligation to make repairs, does undertake to make them, he is liable for injuries resulting from his negligence or that of his servants or employees in making the repairs.
Agreement to Repair

The landlord, of course, is obligated to repair to the extent that landlord has covenanted to do so in the lease.
Agreement to Repair

• Once a landlord covenants to make repairs, he cannot escape his obligation on the grounds that the repairs were more expensive than anticipated. Langham's Estate v. Levy, 198 S.W.2d 747 (Tex. Civ. App. - Beaumont 1946, writ ref'd n.r.e.).
Agreement to Repair

- Under the theory of mutual independency of covenants, Texas courts have consistently held that if a landlord covenants to make repairs but fails to do so, this will not excuse the tenant from paying rent unless the failure rises to such a level that the tenant may claim constructive eviction. Ravkind v. Jones Apothecary, Inc., 439 S.W.2d 390 (Tex. Civ. App.-Houston [1st Dist.] 1969, n.r.e.).
Agreement to Repair Exception

• Landlord's covenant to repair and tenant's covenant to pay rent are independent covenants unless contract evidence to the contrary, *Cotrell v. Carrillion Associates, Ltd.*, 646 S.W.2d 491 (Tex. App. - Houston [1st Dist.] 1982, no writ).
OBLIGATION OF TENANT TO REPAIR – COMMERCIAL
(Pre-Davidow)

• The law imposes upon tenant the duty to take good care of the premises, reasonable wear and tear excepted, and this obligation is implied where not expressly waived whether written into the lease contract or not. Gulf Oil Corp. v. Horton, 143 S.W.2d 134, (Tex. Civ. App. - Amarillo 1940, no writ).
IMPLIED WARRANTY OF SUITABILITY

Joseph F. Davidow, M.D.

v.

Inwood North Professional Group--Phase I

747 S.W.2d 373 (Tex. 1988)
Issue

• Is there an implied warranty by a commercial leasehold that the premises are suitable for their intended purpose? ("Implied warranty of suitability")
Holding

• 1) There is an implied warranty of suitability by the landlord in a commercial lease that the premises are suitable for their intended commercial purpose.
• This warranty means that at the inception of the lease there are no latent defects in the facilities that are vital to the use of the premises for their intended commercial purpose and that these facilities will be remain in a suitable condition.

• However, if the parties agree in the lease that the tenant will repair certain defects, then the lease controls.
NO IMPLIED WARRANTY OF SUITABILITY PRIOR TO “DAVIDOW”

• Until *Davidow* the Texas rule was that the "implied warranty of habitability" of *Kamarath* did not extend to a commercial lease.

• "*Davidow*" gave us "implied warranty of suitability" for a commercial lease.

• Unlike *Kamarath*, however, there has been no statute preempting the common law of *Davidow*. 
Affirmative Defense

CONSTRUCTIVE EVICTION
CONSTRUCTIVE EVICTION #

An affirmative defense asserted by a tenant is a claim that the tenant was constructively evicted from the premises.

The elements of constructive eviction are as follows:

• 1. An intention on the part of the landlord that the tenant shall no longer enjoy the premises, which intention may be inferred by the circumstances proven;

• 2. A material act by the landlord or those acting for him or with his permission that substantially interferes with the use and enjoyment of the premises for the purpose for which they are let;

• 3. The act must permanently deprive the tenant of the use and enjoyment of the premises; and

• 4. The tenant must abandon the premises within a reasonable time after the commission of the act.
Elements of constructive eviction

• 1. An intention on the part of the landlord that the tenant shall no longer enjoy the premises, which intention may be inferred by the circumstances proven;
Elements of constructive eviction

2. A material act by the landlord or those acting for him or with his permission that substantially interferes with the use and enjoyment of the premises for the purpose for which they are let;
Elements of constructive eviction

• 3. The act must permanently deprive the tenant of the use and enjoyment of the premises; and
Elements of constructive eviction

• 4. The tenant must abandon the premises within a reasonable time after the commission of the act.