

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 09- **9195**

## ORDER ADOPTING AMENDED TEXAS RULE OF CIVIL PROCEDURE 737

**ORDERED** that:

1. As required by the Act of May 27, 2009, 81st Leg., R.S., ch. 225, § 1, 2009 Tex. Gen. Laws 623 (SB 1448), and in accordance with its mandatory deadlines, the Supreme Court of Texas amends Rule 737 of the Texas Rules of Civil Procedure as follows, effective January 1, 2010.

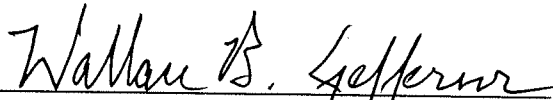
2. To facilitate the proper filing of a suit brought under SB 1448 and Rule 737, the Supreme Court of Texas also promulgates a form petition that tenants may use in these suits. This form petition should be appended, as Appendix A, to the end of the Texas Rules of Civil Procedure.


3. The Clerk is directed to:

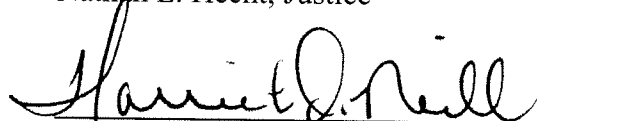
- a. file a copy of this Order with the Secretary of State;
- b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this Order to each elected member of the Legislature; and
- d. submit a copy of the Order for publication in the *Texas Register*.

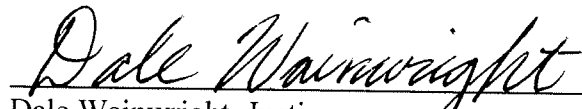
3. These amendments may be changed in response to comments received on or before April 1, 2010. Any interested party may submit written comments directed to Kennon L. Peterson, Rules Attorney, at P.O. Box 12248, Austin TX 78711, or [kennon.peterson@courts.state.tx.us](mailto:kennon.peterson@courts.state.tx.us).

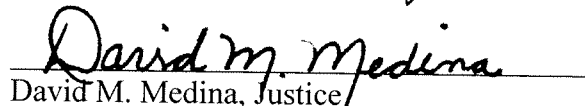
SIGNED this 14<sup>th</sup> day of December, 2009.


  
Wallace B. Jefferson, Chief Justice

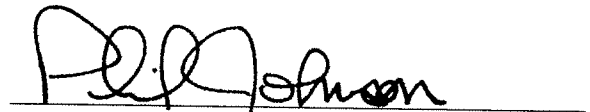
  
Nathan L. Hecht, Justice


  
Harriet O'Neill, Justice

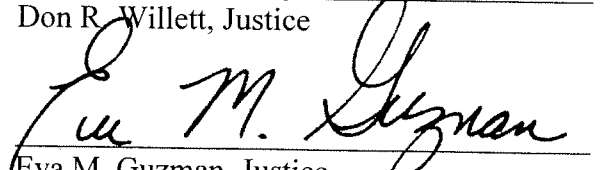
  
Dale Wainwright, Justice

  
David M. Medina, Justice

  
Paul W. Green, Justice

  
Phil Johnson, Justice

  
Don R. Willett, Justice

  
Eva M. Guzman, Justice

PART VII  
RULES RELATING TO SPECIAL PROCEEDINGS

\* \* \*

SECTION 2. JUSTICE COURT PROCEEDINGS  
TO ENFORCE LANDLORD'S DUTY TO REPAIR OR REMEDY  
RESIDENTIAL RENTAL PROPERTY

**Rule 737.1. Applicability of Rule**

This rule applies to a suit 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. Rules 523-574b also apply to the extent they are not inconsistent with this rule.

**Rule 737.2. 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;
  - (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;
- (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;
  - (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 737.3. Citation: Issuance; Appearance Date**

- (a) *Issuance.* When the tenant files a written petition with a justice court, the justice must immediately issue citation directed to the landlord, commanding the landlord to appear before such justice at the time and place named in the citation.
- (b) *Appearance Date.* The appearance date on the citation must not be earlier than the sixth day nor later than the tenth day after the date of service of the citation. For purposes of this rule, the appearance date on the citation is the trial date.

**Rule 737.4. Service and Return of Citation; Alternative Service of Citation**

- (a) *Service and Return of Citation.* The sheriff, constable, or other person authorized by Rule 536 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 six days before the appearance date. At least one day before the appearance date, the person serving the citation must return the citation, with the action written on the citation, to the justice who issued the citation. The citation must be issued, served, and returned in like manner as ordinary citations issued from a justice court.
- (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 sheriff, constable, or other person authorized by Rule 536 is unsuccessful in serving the citation on the landlord under (a), the sheriff, constable, or other person authorized by Rule 536 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.

- (2) If the sheriff, constable, or other person authorized by Rule 536 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 sheriff, constable, or other person authorized by Rule 536 must execute and file in the justice court a sworn statement that the sheriff, constable, or other person authorized by Rule 536 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 justice may then authorize the sheriff, constable, or other person authorized by Rule 536 to serve citation by:
- (A) delivering a copy of the citation, petition, and any attachments to someone over the age of sixteen 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;
  - (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).

The delivery and mailing to the business street address under (b)(2)(A)-(B) must occur at least six days before the appearance date. At least one day before the appearance date, the citation, with the action written thereon, must be returned to the justice who issued the citation. It is not necessary for the tenant to request the alternative service authorized by this rule.

**Rule 737.5. Representation of Parties**

Parties may represent themselves. A party may also be represented by an authorized agent, but nothing in this rule authorizes a person who is not an attorney licensed to practice law in this state to represent a party before the court if the party is present.

**Rule 737.6. Docketing and Trial; Failure to Appear; Continuance**

- (a) *Docketing and Trial.* The case shall be docketed and tried as other cases. The justice may develop the facts of the case in order to ensure justice.
- (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 justice may proceed to hear evidence. If the tenant establishes that the tenant is entitled to recover, the justice shall render judgment against the landlord in accordance with the evidence.
  - (2) If the tenant fails to appear for trial, the justice may dismiss the suit.
- (c) *Continuance.* The justice may continue the trial for good cause shown. Continuances should be limited, and the case should be reset for trial on an expedited basis.

**Rule 737.7. Discovery**

Reasonable discovery may be permitted. Discovery is limited to that considered appropriate and permitted by the justice and must be expedited. In accordance with Rule 215, the justice may impose any appropriate sanction on any party who fails to respond to a court order for discovery.

**Rule 737.8. Judgment: Amount; Form and Content; Issuance and Service; Failure to Comply**

- (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 suit 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.
- (2) In the judgment, the justice 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 cause of action for damages relating to a personal injury.
- (3) If the justice 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.
- (4) If the justice 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 21a, 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 justice must issue the judgment. The judgment may be served on the landlord in open court or by any means provided in Rule 21a 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 justice serves the landlord in open court or by other means provided in Rule 21a, the sheriff, constable, or other person authorized by Rule 536 who serves the landlord must promptly file a certificate 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 Government Code.

#### **Rule 737.9. 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 737.10. Post-Judgment Motions: Time and Manner; Disposition; Number**

- (a) *Time and Manner.* A party may file a motion for new trial, a motion to amend the judgment, or a motion to set aside a default judgment or a dismissal for want of prosecution. The motion must be in writing and filed within ten days after the date the justice signs the judgment or dismissal order.
- (b) *Disposition.*
  - (1) If the justice grants a motion for new trial or a motion to set aside a default judgment or a dismissal for want of prosecution, the resulting trial must occur within ten days after the date the justice signs the order granting the motion.
  - (2) If the justice grants a motion to amend the judgment, the justice must amend the judgment within fifteen days after the date the justice signs the original judgment.

- (3) If the justice does not rule on a motion for new trial, a motion to amend the judgment, or a motion to set aside a default judgment or a dismissal for want of prosecution with a written, signed order within fifteen days after the justice signs the judgment or dismissal order, the motion is considered overruled by operation of law on expiration of that period.
- (c) *Number.* A party may file only one motion for new trial, one motion to amend the judgment, and one motion to set aside a default judgment or a dismissal for want of prosecution.

**Rule 737.11. Plenary Power**

The justice court's plenary power expires when a party perfects an appeal. If a party does not perfect an appeal, the justice court has plenary power to grant a new trial, amend or vacate the judgment, or set aside a default judgment or a dismissal for want of prosecution within fifteen days after the date the justice signs the judgment or dismissal order.

**Rule 737.12. Appeal: Time and Manner; Perfection; Effect; Costs; Trial on Appeal**

- (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 twenty days after the date the justice signs the judgment. If the judgment is amended in any respect, any party has the right to appeal within twenty days after the date the justice signs the new judgment, in the same manner set out in this rule.
- (b) *Perfection.* The posting of an appeal bond is not required for an appeal under these rules, 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.
- (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. 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 737.13. 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.

Comment to 2010 change: The heading of repealed Rule 737, regarding bills of discovery, is deleted. New Rule 737 is promulgated pursuant to Senate Bill 1448 to provide procedures for a tenant's request for relief in a justice court under Section 92.0563(a) of the Property Code. Except when otherwise specifically provided, the terms in Rule 737 are defined consistent with Section 92.001 of the Property Code. All suits must be filed in accordance with the venue provisions of Chapter 15 of the Civil Practice and Remedies Code.

Cause No. \_\_\_\_\_

Tenant: \_\_\_\_\_  
V.  
Landlord: \_\_\_\_\_

In the Justice Court  
Precinct \_\_\_\_\_ Place \_\_\_\_\_  
County, Texas

**PETITION FOR RELIEF UNDER SECTION 92.0563 OF THE TEXAS PROPERTY CODE**

1. **COMPLAINT:** Tenant files this petition against the above-named Landlord pursuant to Section 92.0563 of the Texas Property Code because there is a condition in Tenant's residential rental property that would materially affect the health or safety of an ordinary tenant. Information Regarding Residential Rental Property:

Street Address Unit No. (if any) City County State Zip

Landlord's Contact Information (to the extent known):

Business Street Address Unit No. (if any) City County State Zip Phone Number

2. **SERVICE OF CITATION:** Check the box next to each statement that is true.

- Tenant received in writing Landlord's name and business street address.
- Tenant received in writing the name and business street address of Landlord's management company.
- The name of Landlord's management company is \_\_\_\_\_. To Tenant's knowledge, this is the management company's contact information:

Business Street Address Unit No. (if any) City County State Zip Phone Number

- The name of Landlord's on-premise manager is \_\_\_\_\_. To Tenant's knowledge, this is the on-premise manager's contact information

Business Street Address Unit No. (if any) City County State Zip Phone Number

- The name of Landlord's rent collector serving the residential rental property is \_\_\_\_\_. To Tenant's knowledge, this is the rent collector's contact information:

Business Street Address Unit No. (if any) City County State Zip Phone Number

3. **LEASE AND NOTICE:** Check the box next to each statement that is true.

- The lease is oral.  The lease is in writing.  The lease requires the notice to repair or remedy a condition to be in writing.
  - Tenant gave written notice to repair or remedy the condition on \_\_\_\_\_.  The written notice to repair or remedy the condition was sent by certified mail, return receipt requested, or registered mail on \_\_\_\_\_.
  - Tenant gave oral notice to repair or remedy the condition on \_\_\_\_\_.
- Name of person(s) to whom notice was given: \_\_\_\_\_  
Place where notice was given: \_\_\_\_\_

4. **RENT:** At the time Tenant gave notice to repair or remedy the condition, Tenant's rent was:  current (no rent owed),  not current but Tenant offered to pay the rent owed and Landlord did not accept it, or  not current and Tenant did not offer to pay the rent owed. Tenant's rent is due on the \_\_\_\_ day of the  month  week  \_\_\_\_\_ (specify any other rent-payment period). The rent is \$ \_\_\_\_\_ per  month  week  \_\_\_\_\_ (specify any other rent-payment period). Tenant's rent (check one):  is not subsidized by the government  is subsidized by the government as follows, if known: \$ \_\_\_\_\_ paid by the government, and \$ \_\_\_\_\_ paid by Tenant.

5. **PROPERTY CONDITION:** Describe the property condition materially affecting the physical health or safety of an ordinary tenant that Tenant seeks to have repaired or remedied: \_\_\_\_\_

6. **RELIEF REQUESTED:** Tenant requests the following relief:  a court order to repair or remedy the condition,  a court order reducing Tenant's rent (in the amount of \$ \_\_\_\_\_ to begin on \_\_\_\_\_),  actual damages in the amount of \$ \_\_\_\_\_,  a civil penalty of one month's rent plus \$500,  attorney's fees, and  court costs. Tenant states that the total relief requested does not exceed \$10,000, excluding interest and court costs but including attorney's fees.

Tenant Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Street address Unit No. (if any)

Phone Number

City State Zip

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