

**Supplemental Information Regarding SB 1448
For Consideration By the SCAC**

**November 19, 2009
Submitted by Tom Lawrence**

Issue # 1 Jury Charge

Normally a JP cannot charge a jury in a civil case, although they do charge juries in criminal cases. The statute underlying these rules (Section 92.0563 Property Code) is fairly complicated and these rules are fairly complicated also. It may be difficult for a jury to understand the law and what they are required to do unless there is a charge. It is anticipated that most tenants and landlords will be pro se and will probably not provide much enlightenment on the law or these rules. I suggest we consider adding a provision to Rule 737.14 to allow the justice to charge the jury. The rule could read as follows:

Rule 737.14. Discovery and Trial

Reasonable discovery shall be permitted. Discovery is limited to that considered appropriate and permitted by the justice and must be expedited. In the case of a bench trial, the justice may develop the facts of the case in order to insure justice. In the case of a jury trial, the justice may charge the jury. The failure of any party to respond to an order of the court for discovery may be punished in accordance with Rule 215.2.

Rule 554 Justice Shall Not Charge Jury

The justice of the peace shall not charge the jury in any cause tried in his court before a jury.

The comment before Proposed Rule 737.1 states that "The procedures in Rules 523-574b also apply to the extent they are not inconsistent with the procedures in Rules 737.1-16."

Issue # 2 Petition

It is difficult to understand how these rules will be implemented without seeing a draft petition and a judgment. The attached petition is a rough draft just to provide an idea of the information the tenant must have to fill out a petition under these rules. The information is required by proposed Rule 737.2.

Issue # 3 Judgment

The attached sample judgment will portray how a judgment might look if granted under these rules. One issue is that the judgment is capped at \$10,000, exclusive of interest and costs. It also provides that the order of repair is included in that \$10,000 cap. It does not provide that the order reducing rent be included in the cap but it seems logical

that it would be included as it is one of the five sections in Section 92.0563 (a) that form the basis for a judgment.

The problem is how to draft the judgment. The five sections of Section 92.0563(a) are 1) order to repair, 2) order reducing rent, 3) civil penalty of one month's rent plus \$500, 4) tenant's actual damages, and 5) court costs and attorney's fees. Items 3, 4, and 5 should be part of the judgment for which the tenant can execute on and try and collect.

The order to repair, which must be included in the \$10,000 cap as per the bill, is simply an order that the landlord repair something at their own expense and is not a judgment that the tenant recover that sum in addition to the landlord having to bear the cost of repair. Therefore, the sum set on the order to repair should not be included in the judgment but it must be ascertained as it is part of the judgment cap. Of course the justice will have difficulty determining the exact cost of the repair as the hearing may take place before the landlord can get a good estimate.

Another problem is the order reducing rent. The landlord will suffer the expense of the cost of the reduced rent so the judgment should not also award the tenant the amount of the rent that is reduced. Even though SB 1448 did not say the order reducing rent should be included in the \$10,000 cap it seems it should be as it is in the same section. Even if you believe it is not it still should be identified so the judgment does not exceed the jurisdictional limit of the justice court. The issue could be said to be how much is it costing the landlord and if the rent is reduced then that is lost revenue to the landlord directly related to this suit. Just as in the order to repair it will be necessary to set a value for the reduced rent.

We want the tenant to be able to collect a judgment for a civil penalty, actual damages and attorney's fees and costs. We do not want a tenant to collect a judgment for the expense the landlord will incur for repairing the property or in reducing the rent. Those numbers must be identified in the judgment but not made a part of the judgment for collection purposes. Also it is important that the judgment not exceed \$10,000 as not only does that violate the provisions of SB 1448 but it will cause the justice court to lose jurisdiction of the case and dismiss for want of jurisdiction.

These considerations will cause a judgment under these rules to look a little different. These are only drafts of a petition and a judgment and are provided for information purposes as they will not be a part of the rules, and are not close to a final product.

Cause No. _____

Tenant: _____

In the Justice Court

Vs. _____

Precinct _____ Place _____

Landlord: _____

Harris County, Texas

TENANT'S SUIT TO ENFORCE LANDLORD'S DUTY TO REPAIR OR REMEDY

IPETITION: Tenant files the petition against the above-named Landlord pursuant to Texas Property Code Section 92.0563 to enforce the Landlord's duty to repair or remedy a condition.

Description of Leased Premises:

Street Address or Other Description	Unit No. (If any)
City	County
Landlord's Name:	State
	Zip

Landlord's Address or Address of Landlord's agent for service of process: _____

Telephone number for Landlord and/or for Agent for service of process: _____

Date of First notice to Repair: _____ The notice was given by: ☐ Oral ☐ Written ☐ Certified Mail.

Name of person to whom notice was given: _____

At the time notice to repair was given the tenant's rent was: ☐ Current (No rent owed) ☐ Not current but tenant offered to pay at time notice of repair was given.

Condition of the premises tenant seeks to have repaired or remedied: _____

How did the condition occur? Be specific. Or, if not known, state it is not known how the condition occurred. _____

The Landlord: ☐ Has had a reasonable time to repair the condition and has not made a diligent effort to do so.

☐ Has not had a reasonable time to repair the condition.

2. RELIEF REQUESTED: Tenant requests the following relief: ☐ A Court order to repair ☐ A court order reducing rent ☐ Actual damages in the amount of \$ _____ ☐ Civil penalty of one month's rent plus \$500.00 ☐ Attorney's fees in the amount of \$ _____ and ☐ Court costs.

Tenant states that the ☐ Total damages exceed \$10,000.00 or ☐ Total damages do not exceed \$10,000.00.

Reduction in rent, if requested: Rent is due on the _____ day of the ☐ Month ☐ Week ☐ _____ (specify other rent paying period) The rent is \$ _____ per ☐ Month ☐ Week ☐ _____ (specify other rent paying period). The tenant's rent (check one): ☐ is not subsidized by the government ☐ is subsidized by the government as follows: \$ _____ paid by the government, and \$ _____ paid by the tenant.

Tenant seeks a reduction of rent in the amount of \$ _____, to begin on (date) _____

Tenant Signature: _____

Street address _____

City _____ State _____ Zip _____

Phone number _____

Subscribed and Sworn to before me on this the _____ day of _____, 20_____.

Notary Public in and for State of Texas -OR- Justice Court Clerk (Assumes a sworn petition)

Case Number: _____ L

Plaintiff/Tenant

vs.

Defendant/Landlord

§
§
§
§
§

In the Justice Court
Harris County, Texas
Precinct 4, Place 2

JUDGMENT FOR TENANT ON TENANT'S SUIT
TO ENFORCE LANDLORD'S DUTY TO REPAIR OR REMEDY

(NON-JURY TRIAL)

On this day, _____, came on to be heard in its regular order the above styled and numbered cause, wherein the parties, TENANT and LANDLORD appeared before this court. The TENANT is seeking to enforce the LANDLORD'S DUTY TO REPAIR OR REMEDY the premises commonly known and described _____ as _____.

The pleadings, evidence and argument of the parties having been heard, it is the opinion of the Court that the TENANT is entitled to relief pursuant to Property Code Section 92.0563(a).

IT IS THEREFORE ORDERED, that the LANDLORD must take reasonable action to repair or remedy the following condition(s): _____, for a cost not to exceed \$ _____. The repairs must be completed by _____.

The court finds the rent is \$ _____ per _____. The TENANT'S rent is ordered reduced from \$ _____ per _____ to \$ _____ per _____, beginning on the _____ day of _____ 2009. The order reducing rent will terminate on the _____ day of _____ 2009 and the rent will revert to the rent specified in the lease agreement. If the court has not issued an order to repair or remedy then the rent reduction will remain in effect until terminated by the court. The total value of reduced rent shall not exceed \$ _____.

IT IS FURTHER ORDERED by the Court that the TENANT, is entitled to actual damages of \$ _____, civil penalty of \$ _____, and attorney's fees of \$ _____, for a total judgment of \$ _____, plus court costs of \$ _____ and post judgment interest at the rate of % _____ per annum, for all of which let execution issue. The value of the reduction in rent, cost of repairs, actual damages, civil penalty, and attorney's fees shall not exceed \$10,000.

Entered and Signed this _____ day of _____, 2009.

JUDGE TOM LAWRENCE

Justice of the Peace, Precinct 4, Place 2