

Tricky Non-Eviction Landlord/Tenant Issues

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Agenda

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

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Resources

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

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Writs of Re-entry
(Getting Back In)
&
Writs of Restoration
(Getting Utilities Turned Back On)
Property Code Sec. 92.008 - .0091 & 93.002 -
.003
Evictions Deskbook Chapter

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Can a tenant request a writ of re-entry if they have a commercial tenancy, assuming all requirements are met?

- A. Yes
- B. No

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Can a tenant request a writ of restoration if they have a commercial tenancy, assuming all requirements are met?

- A. Yes
- B. No

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Bronson and Amber are siblings and inherited their parents' house after they passed away. They got into a big argument and Bronson changed the locks while Amber was at work. Would a writ of re-entry be a potential option for Amber?

- A. Yes
- B. No

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Tim's house was foreclosed on and Jane bought the house at auction. Tim refused to move out and so Jane had the utilities turned off. Would a writ of restoration be a potential option for Tim?

- A. Yes
- B. No

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

- A. Yes
- B. No

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

A. Yes

B. No

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

A. Yes

B. No

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

- A. Yes
- B. No

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

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

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If a tenant is upset that you decided not to issue a writ of restoration or re-entry that they were seeking, can they appeal your decision not to issue the writ?

- A. Yes
- B. No

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What if a landlord gets a writ of possession in an eviction case concerning the same premises that a writ of re-entry was issued for. Do they still have to comply with the writ of re-entry?

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

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

- A. Yes.
- B. No.

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Use the Deskbook!

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

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Writ of Restoration Scenario

- **Judge:** *Ms. Myers, I have reviewed your application for a writ of restoration. I am now going to place you under oath so that you can testify to your concerns. Please raise your right hand, do you solemnly swear to tell the truth, the whole truth and nothing but the truth?*
- **Ms. Myers:** *I do.*
- **Judge:** *Tell me why we're here.*
- **Ms. Myers:** *My apartment complex keeps shutting the water on and off. They sent out a notice about repairing the pipes, but it has been going on longer than the notice said the repairs would take. And they didn't start doing it until after I got a little behind in my rent!*

How should the judge rule?

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Repair & Remedy (Getting Stuff Fixed)

*Property Code Sec. 92.051-92.062; TRCP
Rule 509*

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

- A. Yes
- B. No

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

- A. Yes
- B. No

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

- A. Yes
- B. No

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

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

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

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

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What if the court issues a judgment in a repair and remedy case and the landlord gets an eviction judgment shortly after. What happens to the repair and remedy case judgment?

- A. The entire judgment is vacated.
- B. An order to repair or remedy and any rent deduction are vacated, but any monetary award stays in place.
- C. An order to repair or remedy is vacated, but any monetary award and/or rent deduction stays in place.
- D. Any monetary award is vacated, but the rest of the order stays in place.

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Use the Deskbook!

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

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Repair and Remedy Scenario #1

- Petitioner claims that the paint has been peeling off of her walls for months and it is just getting worse. She states that she has given her landlord all of the required notices under the law and has been up to date in her rent the whole time. It has been over a month since the last written notice, and the landlord still has not made any repairs.
- Petitioner is requesting that the landlord be ordered to repair the walls, to have her rent reduced from the date of the first notice until the repairs are made, and for the landlord to pay a civil penalty of \$2000.

What facts do you need to develop at trial/what do you need to determine?

If the landlord is proved to be liable, can the court grant all of the tenant's requests?

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Repair and Remedy Scenario #2

Lawrence files a suit seeking the eviction of Terry for nonpayment of rent. The rent is \$600 per month and Lawrence claims Terry owes one month's rent. At trial Terry alleges that he is entitled to an offset of the rent due because he had to make repairs that Lawrence failed to make and he (Terry) is entitled to deduct the cost of those repairs from his monthly rent. Terry says the total cost of the repairs was \$800 so he doesn't owe Lawrence the \$600 in rent for one month. Terry says the condition that had to be repaired was that a pipe burst during the freeze in February and there was flooding in his dwelling which Lawrence failed to repair despite several text messages and emails asking him to do so. Lawrence says wait a minute; Terry has to file a repair and remedy case over this. And also this is just a counterclaim that can't be heard in justice court.

Who is right? Lawrence or Terry? How do you handle this? What more, if anything, do you need to know?

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Writs of Retrieval (*Getting Certain Property Out*)

Property Code Chapter 24A
Evictions Deskbook Chapter 9

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Would a writ of retrieval be a potential remedy for someone with a commercial tenancy?

- A. Yes
- B. No

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Alice and Walter have filed for divorce. Alice moved out, but accidentally left some of her medications behind. Now, Walter won't let Alice back into their home to get them. Would a writ of retrieval be a potential option for Alice?

- A. Yes
- B. Yes, but she will have to file the application in the court hearing the divorce.
- C. No

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

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

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

- A.True
- B.False

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

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

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

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

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If you issue a writ of retrieval or if you deny a request for one, can either party appeal your decision?

- A. Yes
- B. No

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If the occupant interferes with the execution of the writ, the court can hold them in contempt.

- A. True
- B. False

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Use the Deskbook!

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

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Writ of Retrieval Scenario

- **Judge:** *I have an application for a Writ of Retrieval from Randy Sarosdy. Mr. Sarosdy, are you ready?*
- **Mr. Smith:** Yes.
- **Judge:** *I see that the respondent was given notice of the hearing and is not present. Mr. Sarosdy, I see you certified that the current occupant has denied you entry and you have provided a copy of your cell phone bill that was addressed to the residence in question. I also see that you have certified that there is no court order prohibiting contact with the occupant and that you have claimed you will suffer personal harm if the items are not returned to you shortly. On the list of items you are requesting, you have listed some medications, a check book, and your desktop computer. Is that everything?*
- **Mr. Smith:** Yes

How should the judge rule?

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