

# My apartment was damaged in Hurricane Harvey...

## Where do I start?

You should start by reading your lease (if you don't have a copy, you can request one from your landlord). It may explain what will happen if your apartment is damaged or destroyed in a natural disaster.

## Do I have to pay my rent?

YES. If you are staying in your apartment or rental house, Texas law requires that you pay rent. If you do not pay your rent, the landlord may not be obligated to repair the unit, and the landlord might be allowed to evict you. If your job and income were affected by the storm, you might be able to negotiate a delay in paying rent, but your landlord does not have to agree to this. Be sure to get any agreement in writing. It is also possible for a court to issue an order reducing your rent, but you should contact an attorney to see if this might apply to you. Texas Property Code Sec. 92.052, 92.054, 92.056.

## Do I have to pay late fees if I was late paying rent?

Yes, but only if your lease allows it. Additionally, Texas law gives a one-day grace period before late fees can be charged meaning if your rent is due on the 1<sup>st</sup>, a late fee cannot be charged until the 3<sup>rd</sup>. Texas Property Code Sec. 92.019.

## Does the landlord have to fix the apartment?

Yes, but there are limits. First, you must be current with your rent. Second, you must tell the landlord about the needed repair, and you must usually do that in writing. (They have no obligation to make repairs until you tell them). Third, the condition needing repair must "materially affect the physical health or safety of an ordinary tenant," meaning that it is something unhealthy or dangerous, rather than something that is just ugly or inconvenient. If you want your landlord to fix things, we recommend mailing a letter to the address where you normally send rent, explaining what you want fixed and why it is necessary to your health and safety to fix it. If the landlord has not made the repairs within a "reasonable time" (see the next section), send a second letter via certified mail requesting the repairs and demanding an explanation for the lack of repair. Two sample letters are attached. Make sure you document the damage needing repair and your communications with the landlord. Texas Property Code Sec. 92.052, 92.056

## How long does the landlord have to make the repairs?

The law states that the landlord must make a diligent effort to make the repairs and it must be within a "reasonable time." Normally, the law presumes that 7 days is reasonable. However, it also considers the nature and severity of the condition needing repair, and the availability of materials and labor. After a disaster when there are shortages of materials and labor, the time allowed for repair might be longer. Additionally, in the case of significant flooding from a natural disaster (called a "casualty loss"), the time in which the landlord has to make repairs may not even begin until the landlord receives payment from the insurance company. Texas Property Code Sec. 92.052, 92.054, 92.056

## Can the landlord require me to move out during the repairs?

Maybe. If the apartment is totally unusable for residential purposes, the landlord can terminate your lease. If your lease is terminated, you are entitled to a pro rata refund of rent from the date you move out, and a refund of any security deposit you are otherwise entitled to. Often, landlords will offer tenants to move into other units during the repairs. This is not required, and the terms are generally negotiable. Be sure to get everything in writing. Texas Property Code Sec. 92.054

## Can I just move out?

Maybe. After what is called an "insured casualty loss" (any sudden unexpected damage such as caused by fire, explosion and likely hurricane-related flooding), you can terminate the lease before repairs are completed if the unit is "as a practical matter totally unusable for residential purposes." You must give the landlord notice in writing (an example is attached) and you are entitled to a pro rata refund of rent from the date you move out, and a refund of any security deposit you are otherwise entitled to. However, if you attempt to terminate the lease and the landlord disagrees about whether the damage is an "insured casualty loss" or about whether the apartment is "totally unusable for residential purposes" they might try to

keep your security deposit, and charge you additional rent and fees for early termination of the lease. If this occurs, you can either pay up or try to fight it in court. Additionally, if you have sent a first and second request for repairs, and waited a reasonable time, and were current on your rent when the requests were sent, the law allows you to terminate your lease and sue the landlord for money. Texas Property Code Sec. 92.054, 92.056.

### Can I do the repair myself and then deduct it from my rent?

Probably not. The law provides for “repair and deduct,” but the procedures are complicated. Additionally, the total cost of the repairs may not exceed one month’s rent or \$500, whichever is greater. This likely will not cover any significant repairs due to hurricane flooding. Texas Property Code Sec. 92.0561.

### Do these rights apply if I am not a citizen or if I am undocumented?

YES! Your rights as a tenant are not dependent on your citizenship or immigration status.

### Where can I find help or more information?

Texas Tenant Advisor – <http://www.texastenant.org>

Tenant’s Rights Handbook (English) - <http://www.tyla.org/tyla/assets/File/Tenants%20Rights%202014.pdf>

Tenant’s Rights Handbook (Spanish) - <http://tinyurl.com/ybm7udvt>

Texas Bar Associate Hotline - (800) 504-7030 (English, Spanish, and Vietnamese)

Lonestar Legal Aid - <http://lonestarlegal.org/> ; (800) 733-8394

*Sample Letter – 1st Request for Repairs (mail to address where you send your rent; keep a copy for your records)*

Date

Dear Landlord’s Name,

I live at Address, Unit number, City, State. I am current on my rent and am requesting the following repairs: Condition 1 that needs repairing. Condition 2 that needs repairing, etc.

These conditions materially affect the health and safety of an ordinary tenant in the following ways:

Condition 1 is unsafe and unhealthy because \_\_\_\_\_. Condition 2 is unsafe and unhealthy because \_\_\_\_\_. Thank you for your prompt attention to this matter.

Sincerely,

Your Name

*Sample Letter – 2nd request for repairs (mail to address where you send your rent via certified mail; keep a copy for your records)*

Date

Dear Landlord’s Name,

I live at Address, Unit number, City, State. On date, I sent a written request for the following repairs: Condition 1 that needs repairing Condition 2 that needs repairing, etc.

Number of days since first letter, a reasonable time for the repairs, have passed and the repairs have not been made. These conditions materially affect the health and safety of an ordinary tenant in the following ways: Condition 1 is unsafe and unhealthy because \_\_\_\_\_. Condition 2 is unsafe and unhealthy because \_\_\_\_\_.

I am current on my rent, and request that the repairs be made promptly. I also request an explanation as to why the repairs have not been made yet. If the requested repairs are not made, I may pursue the remedies that are allowed under Ch. 92 of the Texas Property Code and elsewhere. Thank you for your attention to this matter.

Sincerely,  
Your Name