

NO. _____

_____ § In the Justice Court of _____ County, Texas

_____ § Precinct _____ Place _____

Plaintiff(s)

vs.

Defendant(s)

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, _____ (“Plaintiff(s)”) filing this Plaintiff’s Original Petition, **discovery (if any) will be conducted under Level 1**, pursuant to Rule 190.2 of the Texas Rules of Civil Procedure, and for cause of action, would respectfully show:

PARTIES

1.

Plaintiff(s) is/are an [individual] residing in _____ County, Texas.

2.

Defendant, _____, is a (corporation, limited liability company, limited liability partnership, sole proprietorship, general partnership, other _____ ; ~~‘strike through which does not apply’~~), whose usual place of business/parking lot address is: _____

_____ County of _____, Texas

and may be served with process at the address of its registered agent being per Texas Secretary of State Business Records: Name of agent: _____

Service address of agent: _____

3.

Defendant, _____, is a (corporation, limited liability company, limited liability partnership, sole proprietorship, general partnership, other _____; ~~'strike through which does not apply'~~), whose usual place of business/parking lot address is: _____

_____ County of _____ Texas

and may be served with process at the address of its registered agent being per Texas Secretary of State Business Records: Name of agent: _____

Service address of agent: _____

JURISDICTION AND VENUE

4.

This Court has jurisdiction and venue of the cause of action under the Texas Government Code and Texas Civil Practice and Remedies Code, because the amount in controversy is less than \$20,000, the subject matter cause of action may be adjudicated by the Court and the cause of action arose at Defendant's usual place of business in the county the Court is located.

FACTUAL BACKGROUND

5.

Plaintiff is [a member of Defendant's gym/is a tenant in Defendant's apartment complex, ~~strike through the nonapplicable option~~] and uses parking lot facilities made available by Defendant.

Plaintiff(s) legally parked his/her/their vehicle in a parking lot space located at _____

_____ (address or parking lot), _____, County, Texas, provided by and under the control of Defendant(s), as a consequence of [Plaintiff being a tenant in the apartment complex where vehicle parking premises are provided for such tenants / Plaintiff use of gym exercise facilities at which Plaintiff is a member where vehicle parking premises are provided for members and/or guests, ~~strike through the inapplicable option~~].

6.

Plaintiff(s), an invitee, use of a parking lot space provided by and under the control of Defendant, was at the express or implied invitation of Defendant(s) and Plaintiff(s) entered thereon either as a member of the public for a purpose for which the parking lot is held open to the public or for a purpose connected with the business of Defendant that does or may result in their mutual economic benefit.

7.

On or about _____ (date and time), upon Plaintiff's return to the parking lot location where Plaintiff had parked their vehicle, Plaintiff discovered that the parked vehicle was [stolen / incurred damages because of the criminal act of an unknown and unauthorized third party break-in into the vehicle / Plaintiff sustained personal injury as a result of an encounter with the person(s) involved with the unauthorized break-in/ theft of Plaintiff's parked vehicle, ~~strike through the inapplicable option~~]. The

following personal property was stolen from the vehicle as a consequence of the criminal act
(~~strikethrough~~ ~~if~~ ~~not~~ ~~applicable~~):

8.

Upon written demand presented by Plaintiff to Defendant, Defendant denied any liability to compensate Plaintiff for their harm, damage and/or injury associated with the criminal act committed upon Plaintiff's vehicle parked in Defendant's parking lot.

CAUSE OF ACTION – NEGLIGENCE CLAIM

9.

Defendant breached its duty to Plaintiff, an invitee, to keep the parking lot under its control in a safe condition and to reasonably protect Plaintiff against parked vehicle theft or break-in criminal activity in the parking lot, and negligently failed to provide reasonable safe parking lot premises and sufficient security measures that would prevent or reduce the risk of occurrence of vehicle theft or break-ins, loss of personal property and/or personal injury. Defendants actions and/or omissions constituted negligence, because of Defendant's failure to do that which a person of ordinary prudence would have done under the same or similar circumstances and the negligent conduct was a direct and proximate cause of the [stolen vehicle/break-in damage to the vehicle/ personal injury to Plaintiff/loss of Plaintiff's personal property; ~~strike through non applicable options~~] made the basis of this lawsuit.

10.

The Defendants negligent actions or omissions include, but are not limited to, one or more of the following:

- Defendant failed to provide reasonable parking lot security;
- Defendant failed to timely and properly notify Plaintiff of the risk of criminal activity on the parking lot and what actions Plaintiff should take to avoid being a crime victim;
- Defendant failed to provide a reasonably safe parking lot for the safety of Plaintiff, an invitee.

Defendant had a duty to exercise the degree of care that a reasonably prudent person would use to avoid harm to others, including but not limited to damage to personal property and personal injury, under circumstances similar to those described herein. Defendant breached this duty.

11.

Plaintiff's suffered harm, damages and/or injuries which were directly and proximately caused by Defendants negligent, careless, and reckless disregard of said duty. Plaintiffs will show that the above foregoing acts and/or omissions, constitute negligence that directly and proximately caused the occurrence of Plaintiffs injuries, harm and/or damages. Plaintiffs injuries, harm and/or damages resulting from Defendant's negligence are described in paragraph 16. below.

CAUSE OF ACTION - PREMISES LIABILITY (ALTERNATIVE CLAIM)-

12.

Defendant, who had control of the parking lot premises, breached its duty to Plaintiff to use ordinary care to protect Plaintiff, an invitee, from criminal acts of third parties associated with the [theft/break-in/personal injury] associated with Plaintiff's vehicle parked in the parking lot premises, because Defendant knew or had reason to know of a (1) foreseeable and (2) unreasonable risk of harm to the Plaintiff associated with such criminal act, and breach of that duty is the proximate cause of Plaintiff

suffering damages, harm and/or injury. Further, Defendant breached its duty to Plaintiff to keep the parking lot under its control in a safe condition.

13.

Foreseeability. Defendant knew or had reason to know of foreseeability of risk of harm to Plaintiff because of:

- Proximity – Plaintiff’s evidence will show that other crimes have occurred on the parking lot and its immediate vicinity known by Defendant;
- Recency and Frequency - Plaintiff’s evidence will show that previous crimes have recently occurred on the parking lot premises, as well as immediate past, and such crimes has occurred frequently many times and not isolated events known by Defendant;
- Similarity – Plaintiff’s evidence will show previous crimes on the parking lot are sufficiently similar to the crime suffered by Plaintiff as to place the Defendant on notice of the specific danger.
- Publicity – Plaintiff’s evidence will show Defendant knew or had reason to know of publicity surrounding the previous crimes and they knew or should have known of a foreseeable danger to Plaintiff.

14.

Unreasonableness. Defendant breached its duty owed to Plaintiff to reduce or eliminate the unreasonable risk of harm created by Defendant failing to have adequate vehicle theft/break-in security systems and procedures in place in the parking lot. Defendant knew or had reason to know of the foreseeability of prior similar criminal activity on the parking lot and the risk such criminal activity is one Plaintiff is to be protected against and the likelihood of harm to Plaintiff’s person and/or harm to Plaintiff’s property. The Defendant’s failure to exercise reasonable security systems in place in the parking lot to eliminate or reduce the risk of harm to Plaintiff, is a proximate cause of damage to Plaintiff. The risk of

foreseeable harm to Plaintiff is unreasonable because the risk of the foreseeable crimes outweighs the burden placed on Defendant to prevent or reduce it.

Plaintiff's injuries and/or damages resulting from Defendant's premises liability are described in paragraph 16. below.

CAUSE OF ACTION – BREACH OF IMPLIED WARRANTY OF HABITABILITY (ALTERNATIVE CLAIM)-

(Strike this entire section if the suit is not against an apartment)

15.

Defendant, pursuant to Texas Property Code, Title 8, Landlord and Tenant Chapter 92, Residential Tenancies, breached its duty of implied warranty of habitability owed to Plaintiff, a tenant.

- Before filing this suit, Plaintiff gave timely written notice to Defendant concerning Defendant's unsafe parking lot condition associated with Plaintiff being concerned about their safety and Plaintiff being unreasonably exposed to potential unsafe personal injury from encountering criminals in the act of breaking into or stealing Plaintiff's parked vehicle legally parked in Defendant's parking lot;
- Defendant after receiving timely written notice from Plaintiff, failed to timely remedy the unsafe parking lot condition and breached its duty of implied warranty of habitability owed to Plaintiff;
- As a consequence of Defendant not timely fixing, repairing or installing reasonable security systems and processes and safety notices issued to Plaintiff, in Defendant's parking lot, the purpose of which is to prevent and/or reduce the risk of parked vehicle theft or break-ins and consequent associated and foreseeable encounter of a vehicle owner with criminals and their foreseeable follow-on defensive and assaultive behaviour risk directed upon Plaintiff, a tenant,

directly and proximately materially affects the physical health or safety of Plaintiff, an ordinary tenant, and damages incurred by Plaintiff as a consequence of its vehicle being stolen/broken into/personal property stolen from Plaintiff's vehicle.

- Plaintiffs damages resulting from Defendant's breach of its duty of implied warrant of habitability owed to Plaintiff are described in paragraph 16. below.

DAMAGES

16.

As a direct and proximate result of the [negligent acts and/or omissions of Defendant; breach of Defendant's premises liability duty owed to Plaintiff; Defendant's breach of its implied warranty of habitability, ~~strike through non-applicable options~~], Plaintiffs have suffered damages for which Plaintiffs seek recovery from Defendant. Plaintiff requests recovery of the following damages from Defendant:

1. Property Damage

1.1. Value of stolen vehicle (\$_____) / Break-in damage to the vehicle (\$_____) (~~strike through any non-applicable damage~~).

1.2. Value of personal property stolen from the vehicle (\$_____) (~~strike through if not applicable~~)

1.3. Plaintiff's rent value decreased to (\$_____) because of the decreased rental value resulting from the unsafe condition (~~strike through if suit is not against an apartment~~);

2. Personal Injury Damages (~~strike through if not applicable or suit is against an apartment~~)

2.1. Past medical expenses;

2.2. Past physical pain and suffering;

2.3. Past physical impairment;

2.4. Past mental anguish and suffering;

- 2.5. Past lost wages and loss of consortium;
- 2.6. Future medical expenses;
- 2.7. Future physical pain and suffering;
- 2.8. Future physical impairment;
- 2.9. Future mental anguish and suffering; and
- 2.10. Future lost wages and future loss of consortium.

JURY/BENCH TRIAL

18.

() Contemporaneous with the filing herewith, Plaintiffs have paid or will pay a jury fee and make a demand that the case be brought before the jury for a trial on all matters.

() Plaintiff requests the case be heard by the Court, bench trial, and not by jury.

(~~strikethrough the nonapplicable option~~)

PRAYER

19.

WHEREFORE, PREMISES CONSIDERED,

Plaintiffs respectfully pray that Defendant be cited to appear and answer herein, and that upon final trial and hearing hereof, Plaintiffs recover a judgment over and against Defendant for the damages as pled herein, based upon the evidence, in the amounts the jury/Court determines to be fair and reasonable, and for such other and further relief, at law and in equity, to which the Plaintiffs may show themselves justly entitled. Petitioner prays for general relief.

Plaintiff be awarded costs of court and attorney fees.

As a consequence of Defendant's breach of its implied warranty of habitability owed to Plaintiff, a tenant, Plaintiff requests the Court, upon Plaintiff's election, to (~~strikethrough these awards if suit is not against an apartment~~):

- Issue an Order to Defendant directing it to timely take steps to remedy the unsafe condition; and/or
- Issue an Order that reduces Plaintiff's rent according to the decreased rental value resulting from the unsafe condition; or
- Grant a judgment to Plaintiff for one month's rent plus \$500; or
- Grant a judgment for the amount of the Plaintiff's actual damages resulting from the unsafe condition;
- Court costs and attorneys' fees excluding those relating to recoveries for personal injury

(Notice to Reader: Plaintiff's damages and amount in controversy under the Texas Property Code in regard to a claim of breach of implied warranty of habitability, including attorney's fees, cannot exceed \$10,000).

Respectfully submitted,

_____ Printed Name: _____

Plaintiff, Pro Se State Bar No. (if an attorney): _____

Address: _____

County of _____, Texas.

Telephone: _____ Fax: _____

E-Mail Address: _____

Plaintiff consents to the e-mail service of the answer and any other motions or pleadings to this e-mail address. (*Tick this box if Plaintiff so consents*)

NO. _____

_____ § In the Justice Court of _____ County, Texas

_____ § Precinct _____ Place _____

Plaintiff(s)

vs.

_____ §

_____ §

Defendant(s)

§

FINAL JUDGMENT FOR PLAINTIFF (BENCH TRIAL)

On _____, 20 _____, this case was tried.

Plaintiff appeared in person by attorney: _____

Defendant appeared in person by attorney: _____

No jury was demanded, and a bench trial was conducted. The judge, having heard the evidence and testimony of the parties, **FINDS** that Plaintiff proved the allegations of the petition, and it is therefore **ORDERED** that Plaintiff recover of Defendant:

the sum of \$ _____,

plus attorney's fees of \$ _____,

with interest at the rate of _____% compounded annually, and

court costs of \$ _____.

the Court Orders Defendant to timely take steps to remedy the unsafe condition, that includes obtaining no later than three months from the date of this Judgment, a third party expert parking lot theft security assessment report assessing the risk of vehicle theft and vehicle break-in in the parking lot and implementing the recommendations of such report within three months of the report date, and to promptly notify Defendant's tenants in writing of the summary findings, conclusions and implementation plans of the security report in regard to improving parking lot safety.

the Court Orders that Plaintiff's rent reduced from \$ _____ per month to \$ _____ per month which reflects the decreased rental value resulting from the unsafe parking lot condition

grants a judgment to Plaintiff for one month's rent of \$ _____ plus \$500

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____ PLACE _____
_____ COUNTY, TEXAS

SAMPLE

NO. _____

_____ § In the Justice Court of _____ County, Texas

_____ § Precinct _____ Place _____

Plaintiff(s)

vs.

Defendant(s)

JUDGMENT FOR PLAINTIFF (JURY TRIAL)

On _____, 20____, this case was tried.

Plaintiff appeared in person by attorney: _____

Defendant appeared in person by attorney: _____

A jury of qualified citizens of the county was impaneled and sworn. The jury finds as a result of their verdict for Plaintiff and assesses damages in the sum of \$_____.

It is therefore **ORDERED** that Plaintiff recover of Defendant:

the sum of \$_____,

plus attorney's fees of \$_____,

with interest at the rate of _____% compounded annually, and

court costs of \$_____.

the Court Orders Defendant to timely take steps to remedy the unsafe condition, that includes obtaining no later than three months from the date of this Judgment, a third party expert parking lot theft security assessment report assessing the risk of vehicle theft and vehicle break-in in the parking lot and implementing the recommendations of such report within three months of the report date, and to promptly notify Defendant's tenants in writing of the summary findings, conclusions and implementation plans of the security report in regard to improving parking lot safety.

the Court Orders that Plaintiff's rent reduced from \$_____ per month to \$_____ per month which reflects the decreased rental value resulting from the unsafe parking lot condition

grants a judgment to Plaintiff for one month's rent of \$_____ plus \$500

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____ PLACE _____
_____ COUNTY, TEXAS

SAMPLE