

All information contained in this pamphlet is only legal information and is not intended to replace or serve as legal advice. The law may apply differently depending on your location, individual circumstances and the current state of the law. For more information, please check other resources and if seeking legal advice consult with an attorney.

Tenants in Colorado have it hard. Colorado offers few protections for those that rent. Generally, tenant rights are determined by state law in addition to local housing or health codes. Such codes may differ per city and some cities do not have local housing or health codes. Additionally, leases can contain different terms depending upon the individual lease. However, there are some general rules that apply for all Colorado tenants. This pamphlet will provide you with some basic information regarding tenant rights and landlord rights.

To find more about the housing or health codes that apply in your city contact your local city and county government.

Before You Move In:

- Inspect the premises for dangerous conditions and defects. Notify the landlord because after you move in, you may assume the risk of obvious dangers/defects and the landlord may not be held liable for such injuries.
- Take pictures of the premises and make note of all things missing, broken, etc. Make a list of what you have found, send a copy to the landlord and keep one for yourself.
- Try to get all requests for repairs, promises, etc. in writing. Keep copies of the lease and other important documents for your own records.

Tenant Screening Agencies:

- These agencies collect tenant information which allows landlords to choose “ideal” tenants. This means that the agencies keep track of a tenant’s pay history, credit history, employment history or criminal record.

Security Deposits:

- The landlord has to return the deposit within one month after the end of the lease or after surrender of the premises, unless the lease specifies otherwise. However this period cannot exceed 60 days.
- You do not have to pay for any normal “wear and tear.” This means the normal deterioration that occurs from use and not from negligence, accident or abuse.

- Landlords can deduct any money owed by the tenant such as rent, utilities, repairs and cleaning contracted for by the tenant.
- If the landlord withholds part of the deposit, they must give the tenant a written statement listing the reasons for the withholding, along with the rest of the deposit amount. This should be mailed to the tenant's last known address within one month after the end of the lease/after surrender of the premises, not to exceed 60 days. If the landlord does not send the written statement within the required time period, the landlord will forfeit their right to keep the portion of the deposit withheld.
- If you have vacated the premises due to defective and hazardous gas equipment you are entitled to your security deposit 72 hours after you leave the premises (see "Repairs" below).

Eviction (Forcible entry and detainer):

- Eviction is also often called forcible entry and detainer. Forcible entry and detainer occurs when a person (e.g. landlord) enters onto a land or rented property to take back possession of the property from the tenant, whether by force, threats, or peaceful means. Landlords must strictly follow the Colorado statutory procedures for evictions in order to have a legal eviction. If you are wrongfully evicted, the landlord may be liable for damages.
- A landlord cannot evict you without a court order.
- A landlord can evict you for a reason (e.g. non-payment of rent) or for no reason other than to get you out.
 - If you have failed to pay rent, the landlord must give you three days' notice in writing, requesting either that you pay rent or surrender the premises.
 - If the landlord terminates the tenancy for no reason, the landlord must give written notice to you, within the proper time determined by your lease. See C.R.S. 13-40-107 Notice to Quit.
- If you are served court documents for eviction (forcible entry and detainer), do not ignore them, because the court may enter a judgment against you. This means that because you did not respond to the claim for eviction, the court will side with the other party. The court may award them possession of the property or a monetary amount. You may respond and contest the claim, agree with the claim or file a counterclaim. If you choose to file a counterclaim, the fee is \$59 and you must personally serve the other party.

If you choose to file a counterclaim you can do this on your own. Forms are posted on the Colorado Judicial Branch Website or you can contact your court clerk for more information. Also, some courts provide legal information for persons that are

representing themselves (pro sé). You may also wish to obtain an attorney or try to find free legal help at Colorado Legal Services.

- Retaliatory eviction may occur when a landlord evicts a tenant because the tenant has reported the landlord for housing code violations or other types of violations. Retaliatory eviction may be a defense to eviction and may allow the tenant to stay at the premises.
- The party that wins the case will be able to receive damages, reasonably attorney's fees and costs of the lawsuit.

Landlord Lien:

- While a tenant is renting, the landlord maintains a lien over the tenant's personal property that is located on the premises. A lien is a legal right that the landlord has to take possession of certain property if a debt is not paid. The lien is allowed to cover unpaid rent, the cost of enforcing the lien, but not attorney's fees. The lien applies to both the tenant's and other household members' possessions, including household furniture, goods, appliances and other personal property. Items excluded are small kitchen appliances, cooking utensils, bed, bedding, necessary clothing, personal/business documents and personal effects.
- If the tenant has vacated the premises, the landlord must allow the tenant and other household members back onto the premises to retrieve property not covered by the lien.
- If the tenant has not vacated the premises, the landlord/landlord's agent may enter upon the premises to assert the lien and gather the tenant's property. However, the landlord may not assert the lien in a way that "substantially interferes with the tenant's right to reasonably occupy and enjoy the premises." If the landlord does so, the lien is forfeited and the tenant may sue for damages.

Repairs:

- Generally, landlords do not have to make repairs unless there is:
 - (1) Defective and hazardous gas equipment
 - (2) Binding agreement by the landlord to repair
 - (3) Violation of the covenant of quiet enjoyment of the premises
 - (4) Repairs for common areas (e.g. walkways)
 - (5) Dangerous/hidden defects
- For defective and hazardous gas equipment, after receiving written notice of the hazard, the landlord must have a professional repair the defective equipment within 72 hours (excluding weekends/holidays). If such repairs are not made, the tenant may vacate the premises and the security deposit should be returned.

- The covenant of quiet enjoyment protects a tenant's right to the peaceable use and enjoyment of the premises. Thus, if a landlord fails to make repairs/maintenance and the conditions are so serious that they force the tenant from the premises, the landlord may be liable for a "constructive eviction." Other examples of things that may substantially interfere with a tenant's right to quiet enjoyment include rodent infestations and broken plumbing. In such cases, the landlord may be liable for damages and the tenant may be able to terminate the lease.
- Colorado's Premises Liability Statute (C.R.S. 13-21-115) addresses injuries to tenants and guests that occur on the landlord's property. In Colorado, tenants are classified as "invitees" and "an invitee may recover for damages caused by the landowner's unreasonable failure to exercise reasonable care to protect against dangers of which he actually knew or should have known."
- Landlords can be held liable for dangerous/hidden defects/conditions of which the landlord knew or should have known. A landlord cannot hide or fail to reveal a dangerous condition that they have knowledge of or that the tenant will not discover. Additionally, a landlord may be held liable if they have agreed to make repairs, but their failure to do so has resulted in injury.

Privacy: Entering the premises for repairs, showings, etc.:

- Whether or not there are restrictions on when a landlord can enter the premises or if they must give any notice varies by city and county, and by lease. Many leases provide that the landlord can enter at any time for repairs or showings. Generally, the landlord has a duty not to violate the covenant of quiet enjoyment [see above, "Repairs"]. This means that the repairs and showings cannot substantially interfere with your enjoyment of the premises. However there are many situations where the landlord has access to the premises (housing code inspections, repairs, emergencies, etc.)

Domestic Violence:

- A landlord cannot terminate a lease or penalize a tenant if the tenant calls the police or 911 for emergency assistance related to domestic violence. A landlord also cannot evict a tenant only because they are a victim of domestic violence.
- If a tenant is a victim of domestic violence and fears for their safety or their children's safety, the tenant may terminate the lease. The tenant must give the landlord written notice and evidence of the domestic abuse (e.g. police report written within past 60 days, valid protection order). The tenant is still responsible for paying one month's rent after leaving the premises. This is due to the landlord within 90 days of leaving. The landlord does not have to return the security deposit until the one month's rent is paid.

Liability and Roommates:

- If you are the only person to sign the lease, and you have other roommates, you are the sole person responsible to the landlord for payment of rent and other terms of the lease.
- If more than one person signs the lease, each person can be held liable for all rent payments and other obligations under the lease. This is called joint and several liability. So, if one person does not pay rent, the remaining persons on the lease are still responsible for that person's amount.

How to Get Out of a Lease:

- Subletting may be a good option if you need to move out or leave the apartment for a long period of time. A sublet allows another person to come in and rent your space, and they pay you the rent. However, you are still completely responsible to the landlord for the payment of rent and all other terms in the lease. Your individual lease will determine if subletting is allowed and on what terms.
- Assignment is also available, depending on your individual lease and location. Assignment will transfer all of your rights under the lease to the new tenant. The new tenant will then be responsible to the landlord for the terms of the lease.
- Generally, if your lease is silent on subletting/assignment, a tenant is able to sublet or assign. If your lease requires the landlord's consent to sublet or assign, the landlord cannot unreasonably refuse to give consent.

To File a Claim in Small Claims Court:

You may want to go to small claims court if you have a claim against a landlord to recover money you are owed, such as a security deposit. Small claims court is a good avenue to take for simple claims and the court can only award up to \$7,500. For claims that are worth more, you can either waive your right to the amount over the \$7,500 that you would be entitled to or you can bring the claim in another court. You do not need a lawyer to go to small claims court and there will be no jury trial. You will be given the chance to tell your side of the story to the judge/magistrate. Only certain types of claims can be brought in small claims court: those for recovering money, property, performing contracts, enforcing restrictive covenants, etc. The statute of limitations (when the time to file your claim expires) will vary depending on your claim.

All forms and instructions can be found on the Colorado Judicial Branch website at <http://www.courts.state.co.us/chs/court/forms/smallclaims/smallclaims.html>.

Remember to keep copies of all documents for your own records.

1. Step 1: Fill out the Complaint

- a. Fill out form JDF 250 completely and accurately.
(JDF 250, Notice Claim, and Summons to Appear for Trial)
 - i. Fill out the “Plaintiff” and “Defendant” information in the box at the top of the form (if defendant is a business, see information below the box)
 - ii. Answer questions 1-4
 - iii. Under “Plaintiff(s)’s Claim” write out your claim (what you want and why)

2. Step 2: File the Complaint

- a. You must file in the county where at least one of the parties you sue currently resides, is regularly employed, has an office for the transaction of business, is a student, or the action may be brought in the county in which the subject rental property is located.
- b. Take your complaint to the Court
- c. Pay the Filing Fee:
 - i. Claim is \$500.00 or less - \$20.00
 - ii. Claim over \$500.00 but less than \$7,500.00 - \$44.00
 - iii. If you cannot pay the fee:
 1. File Form JDF 205, Motion to File without Payment and Supporting Financial Affidavit with the Court
- d. The Court will determine the date and time for trial

3. Step 3: Serve the Complaint

- a. You must serve the complaint on the other party at least 15 days before your trial date. Otherwise, the court may reschedule or dismiss your case.
- b. A copy of the “Defendant’s copy” must be served on each defendant.
- c. Two Options:
 - i. Personal service:
 1. Choose one of the following to serve the defendant.
 - a. sheriff’s department – there is a fee
 - b. process server – there is a fee; listed in the phone book under “Process Server”
 - c. someone you know, 18 y/o or older, who is not a party to the case
 2. Provide them with a copy for each defendant of your Complaint (Form JDF 250) “Defendant’s copy” and “Affidavit of Service.”
 3. The process server will return the “Affidavit of Service” to you which will be completed. File it with the Court, no later than the day of your trial.
 - ii. Certified Mail by the Clerk of the Court
 1. Ask the court to send your Complaint by certified mail. The cost is \$5.00-\$10.00
 2. If this cannot be completed, you need to use personal service (see above)

4. Step 4: Response from Defendant

- a. The defendant may send a response and may also file a counterclaim if they choose.

5. Step 5: Trial

- a. To prepare for trial, gather all of your evidence and witnesses. Be ready to tell your story to the court clearly and calmly.
- b. Make copies of your evidence (one for the judge, one for the defendant)
- c. Be on time—if you don't show up the other party may win by default or the court may dismiss your claim
- d. The magistrate/judge will determine who won and the amount to be paid.

6. Step 6: If You Win, you must collect your judgment; the court does not do it for you.

- a. Ask the losing party for the money owed.
- b. If they pay:
 - i. File a Satisfaction of Judgment (JDF 111) with the court.
 - ii. Mail a copy to party that owed money
 - iii. If had a lien, notify the clerk and recorder to release it.
- c. If they do not pay, you have some options
 - i. (1) Garnishment – you know where the debtor works or banks
 - ii. (2) Lien against real estate – you know if they own property
 - iii. (3) If you do not have the above knowledge you will need to get a court order to serve Interrogatories
 - iv. For instructions and forms on how to collect your judgment go to <http://www.courts.state.co.us/chs/court/forms/garnishmentforms/garnishments.htm>.

7. Step 7: If You Lose

- a. You have the option to appeal, where a district court judge will review your trial. This is not a new trial.
- b. Ask the magistrate to “stay the proceedings.” During this time, no money can be collected.

Miscellaneous Tips:

● Aurora -

Under the Aurora Building Code, all public hallways, stairs or other exitways must be lit at all times. Additionally, there are requirements for proper lighting, heating in each dwelling (70 degrees Fahrenheit), and window maintenance (no broken glass or cracks that allow injury or excessive heat loss). The Aurora Building Code is available at: http://www.municode.com/Resources/ClientCode_List.asp?cn=Aurora&sid=6&cid=1111

● Denver -

Under the Denver Housing Code, the requirements for the maintenance of safe and sanitary housing include the following which must be in good working condition:

- The basic structure of the premises must be weatherproof, waterproof and rodentproof (roof, exterior walls, foundation, windows, etc.)
- Plumbing that does not leak
- Safe stairways

- If there are gas or heat appliances, water and electricity must be available
- Bathroom floor must be “reasonably impervious to water,” easy to clean and in sanitary condition
- Proper drainage of the roof

Denver Housing Code is available at:

<http://www.denvergov.org/PHI/ResidentialHealthandHousing/ResidentialHealthandHousing0/tabid/392002/Default.aspx>

- Boulder -

The Boulder Landlord-Tenant Handbook includes a model lease that contains wording that may protect a tenant’s right to privacy. The Boulder Housing Code allows for entry to be permitted for “reasonable inspections and repairs.” The handbook is available at: http://www.bouldercolorado.gov/index.php?option=com_content&task=view&id=3767&Itemid=1406.

- Colorado Springs –

The Colorado Springs Housing Code requires that any dwelling with “extreme deteriorated surfaces” such as peeling paint shall be repaired and repainted. Additionally, all siding, masonry joints, windows and doors must be weathertight. The Colorado Springs Housing Code is available under Chapter 6, Article 12 at: <http://66.113.195.234/CO/Colorado%20Springs/index.htm>

Resources:

- Colorado Apartment Association: <http://www.caahq.org/>
- Colorado Division of Housing: <http://www.dola.state.co.us/cdh/researchers/documents/Advances/tenant-1.htm>
- Colorado Bar Association, “Landlord-Tenant Rights and Obligations of Tenants”: <http://www.cobar.org/group/display.cfm?GenID=6239>
- Colorado Judicial Branch: <http://www.courts.state.co.us/chs/court/forms/smallclaims/smallclaims.html>.
- Colorado Legal Services: Click on Housing: <http://www.coloradolegalservices.org/co/index.cfm>
- Colorado Revised Statutes: <http://198.187.128.12/colorado/lpext.dll?f=templates&fn=fs-main.htm&2.0>

Security Deposits – CRS § 38-12-101 thru 104

Domestic Violence – CRS § 38-12-402

Liens on Personal Property – CRS § 13-20-102

Forcible Entry and Detainer (eviction) – CRS § 13-40-101 thru 126
Premises Liability – CRS § 13-2-115

- Global Resource for Tenants, Homeless People, Refugees, 1st Time Home Buyers and Squatters: www.tenantrights.net
- U.S. Department of Housing and Urban Development, Protections by State: <http://www.hud.gov/consumer/local.cfm>

References:

- Colorado Revised Statutes, (2007)
- Colorado State Judicial Branch, <http://www.courts.state.co.us/>, (2007)
- Manuel A. Ramos, *Colorado Landlord-Tenant Law*, Fourth Ed. (CLE in Colo., Inc. 2006).