

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

**ENGROSSED**

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

LLS NO. 18-0120.01 Yelana Love x2295

**HOUSE BILL 18-1397**

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**HOUSE SPONSORSHIP**

**Jackson,**

**SENATE SPONSORSHIP**

**Moreno,**

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**House Committees**

Health, Insurance, & Environment

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING MODIFICATIONS TO THE RESIDENTIAL WARRANTY OF**  
102 **HABITABILITY FOR THE PURPOSE OF PROTECTING RENTERS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

Under current law, a warranty of habitability (warranty) is implied into every rental agreement for a residential premises. The bill makes the following changes related to the warranty:

- ! Current law requires written notice before a landlord can be held liable for a breach of the warranty (breach). The bill expands the acceptable notice to also include electronic

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

HOUSE  
Amended 2nd Reading  
May 2, 2018

notice, defines electronic notice, and specifies the time within which the landlord is required to commence remedial action (**sections 3 and 4** of the bill).

! Jurisdiction to provide injunctive relief related to a breach is expanded to include a county court, including a small claims court (**sections 1, 2, and 6**).

! The absence of mold is added to the basic requirements for a habitable residence (**section 5**).

! As long as certain conditions are met, a tenant is authorized to deduct the cost of repair from subsequent rent (**section 6**).

! The requirement that a tenant notify a local government before seeking an injunction is repealed (**section 7**).

! The prohibition on retaliation for a tenant's alleging a breach is modified to specify damages and to eliminate presumptions (**section 8**).

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 13-6-105, **amend**  
3 (1)(f) as follows:

4 **13-6-105. Specific limits on civil jurisdiction.** (1) The county  
5 court shall have no civil jurisdiction except that specifically conferred  
6 upon it by law. In particular, it shall have no jurisdiction over the  
7 following matters:

8 (f) Original proceedings for the issuance of injunctions, except:

9 (I) As provided in ~~section 13-6-104(5)~~ **except** SECTIONS 13-6-104  
10 (5) AND 38-12-507 (1)(b);

11 (II) As required to enforce restrictive covenants on residential  
12 property and to enforce the provisions of section 6-1-702.5; ~~C.R.S.~~, and  
13 **except**

14 (III) As otherwise specifically authorized in this ~~article~~ **ARTICLE**  
15 6 or, if there is no authorization, by rule of the Colorado supreme court.

16 **SECTION 2.** In Colorado Revised Statutes, 13-6-403, **add**

1 (2)(h)(V) as follows:

2 **13-6-403. Jurisdiction of small claims court - limitations.**

3 (2) The small claims court shall have no jurisdiction except that  
4 specifically conferred upon it by law. In particular, it shall have no  
5 jurisdiction over the following matters:

6 (h) Actions involving injunctive relief, except as required to:

7 (V) ENFORCE SECTION 38-12-507 (1)(b).

8 **SECTION 3.** In Colorado Revised Statutes, 38-12-502, **add** (2.5)  
9 as follows:

10 **38-12-502. Definitions.** As used in this part 5, unless the context  
11 otherwise requires:

12 (2.5) "ELECTRONIC NOTICE" MEANS NOTICE BY ELECTRONIC MAIL,  
13 TEXT MESSAGING, OR OTHER ELECTRONIC MEANS.

14 **SECTION 4.** In Colorado Revised Statutes, 38-12-503, **amend**  
15 (2)(b), (2)(c), and (4) as follows:

16 **38-12-503. Warranty of habitability.** (2) A landlord breaches  
17 the warranty of habitability set forth in subsection (1) of this section if:

18 (b) The residential premises is in a condition that ~~is~~ materially  
19 ~~dangerous or hazardous to the tenant's life, health, or safety~~ AFFECTS OR  
20 ENDANGERS THE HEALTH OR SAFETY OF THE TENANT; and

21 (c) The landlord has received written OR ELECTRONIC notice of the  
22 condition described in ~~paragraphs (a) and (b) of this subsection (2) and~~  
23 SUBSECTIONS (2)(a) AND (2)(b) OF THIS SECTION, HAS failed to cure the  
24 problem within a reasonable time, AND HAS FAILED TO COMMENCE  
25 REMEDIAL ACTION WITHIN THE FOLLOWING PERIODS AFTER RECEIVING THE  
26 NOTICE:

27 (I) TWENTY-FOUR HOURS, WHERE THE DEFECTIVE CONDITION IS

- 1 IMMINENTLY HAZARDOUS TO LIFE;
- 2 (II) NOT MORE THAN SEVENTY-TWO HOURS, WHERE THE
- 3 DEFECTIVE CONDITION DEPRIVES THE TENANT OF THE USE OF A
- 4 REFRIGERATOR, RANGE, OR OVEN OR A MAJOR PLUMBING FIXTURE
- 5 SUPPLIED BY THE LANDLORD;
- 6 (III) WITHIN A REASONABLE TIME FOR A CONDITION CAUSED BY AN
- 7 UNFORESEEABLE EMERGENCY OUTSIDE OF HUMAN CONTROL; OR
- 8 (IV) NOT MORE THAN TEN DAYS IN ALL OTHER CASES.

9 (4) In response to the notice sent pursuant to ~~paragraph (c) of~~

10 ~~subsection (2)~~ SUBSECTION (2)(c) of this section, a landlord may, in the

11 landlord's discretion:

- 12 (a) Move a tenant to a comparable unit after paying the reasonable
- 13 costs, actually incurred, incident to the move; OR
- 14 (b) PAY FOR A TENANT TO RELOCATE TO A TEMPORARY LIVING
- 15 LOCATION WHILE THE CONDITION IS BEING REMEDIED OR REPAIRED.

16 **SECTION 5.** In Colorado Revised Statutes, 38-12-505, **amend**

17 (1)(j) and (1)(k); and **add** (1)(l) as follows:

18 **38-12-505. Uninhabitable residential premises.** (1) A

19 residential premises is deemed uninhabitable if it substantially lacks any

20 of the following characteristics:

- 21 (j) Locks on all exterior doors and locks or security devices on
- 22 windows designed to be opened that are maintained in good working
- 23 order; ~~or~~
- 24 (k) Compliance with all applicable building, housing, and health
- 25 codes, which, if violated, would constitute a condition that ~~is dangerous~~
- 26 ~~or hazardous to a tenant's life, health, or safety~~ MATERIALLY AFFECTS OR
- 27 ENDANGERS THE HEALTH OR SAFETY OF THE TENANT; OR

1 (I) THE ABSENCE OF MOLD, WHICH, IF NOT REMEDIATED, WOULD  
2 CONSTITUTE A CONDITION THAT MATERIALLY AFFECTS OR ENDANGERS THE  
3 HEALTH OR SAFETY OF THE TENANT.

4 **SECTION 6.** In Colorado Revised Statutes, 38-12-507, **amend**  
5 (1) introductory portion and (1)(b); and **add** (1)(e) as follows:

6 **38-12-507. Breach of warranty of habitability - tenant's**  
7 **remedies.** (1) If there is a breach of the warranty of habitability as set  
8 forth in section 38-12-503 (2): ~~the following provisions shall apply:~~

9 (b) A tenant may obtain injunctive relief for breach of the  
10 warranty of habitability in any COUNTY OR DISTRICT court of competent  
11 jurisdiction. In any proceeding for injunctive relief, the court shall  
12 determine actual damages for a breach of the warranty at the time the  
13 court orders the injunctive relief. A landlord shall not be subject to any  
14 court order for injunctive relief if the landlord tenders the actual damages  
15 to the court within two business days ~~of~~ AFTER the order. Upon  
16 application by the tenant, the court shall immediately release to the tenant  
17 the damages paid by the landlord. If the tenant vacates the leased  
18 premises, the landlord shall not be permitted to rent the premises again  
19 until such time as the unit would be in compliance with the warranty of  
20 habitability set forth in section 38-12-503 (1).

21 (e) (I) A TENANT MAY DEDUCT THE COST TO REPAIR OR REMEDY  
22 A CONDITION CAUSING A BREACH OF THE WARRANTY OF HABITABILITY  
23 DESCRIBED IN SECTION 38-12-503 (1) FROM A SUBSEQUENT RENT PAYMENT  
24 IN ACCORDANCE WITH THIS SUBSECTION (1)(e).

25 (II) A TENANT DEDUCTING FROM RENT SHALL OBTAIN AN  
26 ESTIMATE FOR THE COST TO REPAIR OR REMEDY THE CONDITION CAUSING  
27 A BREACH OF THE WARRANTY OF HABITABILITY. THE TENANT SHALL

1       RETAIN A COPY OF THE ESTIMATE. THE TENANT SHALL NOT REPAIR OR  
2       REMEDY THE CONDITION.

3               (III) A TENANT MAY MAKE A ONE-TIME DEDUCTION OF THE ENTIRE  
4       AMOUNT OF THE ESTIMATE. IF THE AMOUNT TO REPAIR OR REMEDY  
5       EXCEEDS THE AMOUNT OF ONE MONTH OF PERIODIC RENT, THE TENANT  
6       MAY CONTINUE TO DEDUCT OVER SUBSEQUENT MONTHS UNTIL THE ENTIRE  
7       AMOUNT OF THE ESTIMATE IS DEDUCTED.

8               (IV) THE TENANT SHALL PROVIDE THE LANDLORD WITH AT LEAST  
9       TEN AND NO MORE THAN THIRTY DAYS' WRITTEN OR ELECTRONIC NOTICE  
10      PRIOR TO DEDUCTING RENT. THE NOTICE MUST SPECIFY THE DATE OF  
11      NOTIFICATION, THE NAME OF THE LANDLORD OR PROPERTY MANAGER, THE  
12      ADDRESS OF THE RENTAL PROPERTY, THE CONDITION THAT IS IN NEED OF  
13      REPAIR OR REMEDY, AND A COPY OF THE ESTIMATE TO REPAIR OR REMEDY  
14      THE CONDITION. A TENANT WITHHOLDING RENT OVER MULTIPLE MONTHS  
15      BASED ON THE SAME ESTIMATE IS ONLY REQUIRED TO PROVIDE NOTICE  
16      ONCE. THE TENANT SHALL RETAIN A COPY OF THE NOTICE.

17              (V) A TENANT WHO DEDUCTS RENT IN ACCORDANCE WITH THIS  
18      SUBSECTION (1)(e) MAY SEEK ADDITIONAL REMEDIES PROVIDED BY THIS  
19      SECTION.

20              (VI) IF A COURT FINDS THAT A TENANT HAS WRONGFULLY  
21      DEDUCTED RENT, THE COURT SHALL AWARD THE LANDLORD EITHER  
22      POSSESSION OF THE PREMISES OR:

23              (A) AN AMOUNT OF MONEY EQUAL TO THE AMOUNT WRONGFULLY  
24      WITHHELD; OR

25              (B) IF THE COURT FINDS THAT THE TENANT ACTED IN BAD FAITH,  
26      AN AMOUNT OF MONEY EQUAL TO DOUBLE THE AMOUNT WRONGFULLY  
27      WITHHELD.

1 (VII) AN ESTIMATE PREPARED IN ACCORDANCE WITH THIS  
2 SUBSECTION (1)(e) MUST BE PREPARED BY A PROFESSIONAL WHO IS  
3 UNRELATED TO THE TENANT, TRAINED TO PERFORM THE WORK FOR WHICH  
4 THE ESTIMATE IS BEING PREPARED, AND WHO MEETS ANY REGULATION  
5 REQUIREMENTS OF THIS STATE.

6 SECTION 7. In Colorado Revised Statutes, 38-12-508, **amend**  
7 (4); and **repeal** (3) as follows:

8 **38-12-508. Landlord's defenses to a claim of breach of**  
9 **warranty - limitations on claiming a breach.** (3) ~~A tenant may not~~  
10 ~~assert a claim for injunctive relief based upon the landlord's breach of the~~  
11 ~~warranty of habitability of a residential premises unless the tenant has~~  
12 ~~given notice to a local government within the boundaries of which the~~  
13 ~~residential premises is located of the condition underlying the breach that~~  
14 ~~is materially dangerous or hazardous to the tenant's life, health, or safety.~~

15 (4) EXCEPT AS PROVIDED IN SECTION 38-12-509 (2), a tenant may  
16 not assert a breach of the warranty of habitability as a defense to a  
17 landlord's action for possession based upon a nonmonetary violation of  
18 the rental agreement or for an action for possession based upon a notice  
19 to quit or vacate.

20 SECTION 8. In Colorado Revised Statutes, 38-12-509, **amend**  
21 (2); and **repeal** (3) and (4) as follows:

22 **38-12-509. Prohibition on retaliation.** (2) A landlord ~~shall~~ IS  
23 ~~not be~~ liable for retaliation under this section unless a tenant proves that  
24 ~~a~~ THE landlord breached the warranty of habitability. IF A LANDLORD ACTS  
25 IN VIOLATION OF SUBSECTION (1) OF THIS SECTION, A TENANT MAY  
26 TERMINATE THE RENTAL AGREEMENT AND RECOVER AN AMOUNT NOT  
27 MORE THAN THREE MONTHS' PERIODIC RENT OR THREE TIMES THE

1 TENANT'S ACTUAL DAMAGES, WHICHEVER IS GREATER, AND REASONABLE  
2 ATTORNEY FEES AND COSTS.

3 (3) ~~Regardless of when an action for possession of the premises  
4 where the landlord is seeking to terminate the tenancy for violation of the  
5 terms of the rental agreement is brought, there shall be a rebuttable  
6 presumption in favor of the landlord that his or her decision to terminate  
7 is not retaliatory. The presumption created by this subsection (3) cannot  
8 be rebutted by evidence of the timing alone of the landlord's initiation of  
9 the action.~~

10 (4) ~~If the landlord has a right to increase rent, to decrease service,  
11 or to terminate the tenant's tenancy at the end of any term of the rental  
12 agreement and the landlord exercises any of these rights, there shall be a  
13 rebuttable presumption that the landlord's exercise of any of these rights  
14 was not retaliatory. The presumption of this subsection (4) cannot be  
15 rebutted by evidence of the timing alone of the landlord's exercise of any  
16 of these rights.~~

17 **SECTION 9. Applicability.** This act applies to conduct occurring  
18 on or after the effective date of this act.

19 **SECTION 10. Safety clause.** The general assembly hereby finds,  
20 determines, and declares that this act is necessary for the immediate  
21 preservation of the public peace, health, and safety.