

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 19-0008.01 Richard Sweetman x4333

HOUSE BILL 19-1170

HOUSE SPONSORSHIP

Jackson and Weissman,

SENATE SPONSORSHIP

Williams A. and Bridges,

House Committees

Public Health Care & Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING INCREASING TENANT PROTECTIONS RELATING TO THE**
102 **RESIDENTIAL WARRANTY OF HABITABILITY.**

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 in every rental agreement for a residential premises, and a landlord commits a breach of the warranty (breach) if:

- ! The residential premises is uninhabitable or otherwise unfit for human habitation;
- ! The residential premises is in a condition that is materially

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
February 25, 2019

dangerous or hazardous to the tenant's life, health, or safety; and

- ! The landlord has received written notice of the condition and failed to cure the problem within a reasonable time.

The bill states that a landlord breaches the warranty if a residential premises is:

- ! Uninhabitable or otherwise unfit for human habitation or in a condition that is materially dangerous or hazardous to the tenant's life, health, or safety; and

- ! The landlord has received written or electronic notice of the condition and failed to commence remedial action by employing reasonable efforts within:

- ! 24 hours, where the condition is materially dangerous or hazardous to the tenant's life, health, or safety; or

- ! 72 hours, where the premises is uninhabitable or otherwise unfit for human habitation.

Current law provides a list of conditions that render a residential premises uninhabitable. To this list, the bill adds 2 conditions; specifically, a residential premises is uninhabitable if:

- ! The premises lacks a functioning refrigerator, range, or oven, if the landlord provides any of these appliances pursuant to the rental agreement; or

- ! There is mold that is associated with dampness, or there is any other condition causing the premises to be damp, which condition, if not remedied, would materially interfere with the health or safety of the tenant.

The bill grants to county courts and small claims courts jurisdiction to provide injunctive relief related to a breach.

Current law requires a tenant to serve written notice upon a landlord before the landlord may be held liable for a breach. The bill expands the acceptable form of such notice to include electronic notice.

The bill also:

- ! States that if a tenant gives a landlord notice of a condition that is imminently hazardous to life, health, or safety the landlord, at the request of the tenant, shall move the tenant to a reasonably comparable unit under the control of the landlord or pay for a tenant to reside in a reasonably comparable temporary living location while the condition is being remedied or repaired;

- ! Allows a tenant who satisfies certain conditions to deduct from one or more rent payments the cost to repair or remedy a condition causing a breach;

- ! Repeals the requirement that a tenant notify a local government before seeking an injunction for a breach;

- ! Repeals provisions that allow a rental agreement to require a tenant to assume certain responsibilities concerning conditions and characteristics of a premises;
- ! Prohibits a landlord from retaliating against a tenant in response to the tenant having made a good-faith complaint to the landlord or to a governmental agency alleging a condition that renders the premises uninhabitable or any condition that materially interferes with the health or safety of the tenant; and
- ! Repeals certain presumptions and specifies monetary damages that may be available to a tenant against whom a landlord retaliates.

If the same condition that substantially caused a breach recurs within 6 months after the condition is repaired or remedied, the tenant may terminate the rental agreement 14 days after providing the landlord written or electronic notice of the tenant's intent to do so.

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

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

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

1 **SECTION 2.** In Colorado Revised Statutes, **amend 38-12-502** as
2 follows:

3 **38-12-502. Definitions.** As used in this part 5 and part 8 of this
4 article 12, unless the context otherwise requires:

5 (1) "APPLIANCE" MEANS A REFRIGERATOR, RANGE STOVE, OR OVEN
6 THAT IS INCLUDED WITHIN A RESIDENTIAL PREMISES BY A LANDLORD FOR
7 THE USE OF THE TENANT PURSUANT TO THE RENTAL AGREEMENT OR ANY
8 OTHER AGREEMENT BETWEEN THE LANDLORD AND THE TENANT. NOTHING
9 IN THIS SECTION REQUIRES A LANDLORD TO PROVIDE ANY APPLIANCE, AND
10 SECTION 38-12-505 APPLIES TO APPLIANCES SOLELY TO THE EXTENT THAT
11 APPLIANCES ARE PART OF A WRITTEN AGREEMENT BETWEEN THE
12 LANDLORD AND THE TENANT OR ARE OTHERWISE ACTUALLY PROVIDED TO
13 A TENANT BY THE LANDLORD AT THE INCEPTION OF THE TENANT'S
14 OCCUPANCY OF THE RESIDENTIAL PREMISES.

15 ~~(1)~~ (2) "Common areas" means the facilities and appurtenances to
16 a residential premises, including the grounds, areas, and facilities held out
17 for the use of tenants generally or whose use is promised to a tenant.

18 ~~(2)~~ (3) "Dwelling unit" means a structure or the part of a structure
19 that is used as a home, residence, or sleeping place by a tenant.

20 (4) "ELECTRONIC NOTICE" MEANS NOTICE BY ELECTRONIC MAIL OR
21 AN ELECTRONIC PORTAL OR MANAGEMENT COMMUNICATIONS SYSTEM
22 THAT IS AVAILABLE TO BOTH A LANDLORD AND A TENANT.

23 ~~(3)~~ (5) "Landlord" means the owner, manager, lessor, or sublessor
24 of a residential premises.

25 ~~(4)~~ (6) "Rental agreement" means the agreement, written or oral,
26 embodying the terms and conditions concerning the use and occupancy
27 of a residential premises.

1 ~~(5)~~ (7) "Residential premises" means a dwelling unit, the structure
2 of which the unit is a part, and the common areas.

3 ~~(6)~~ (8) "Tenant" means a person entitled under a rental agreement
4 to occupy a dwelling unit to the exclusion of others.

5 **SECTION 3.** In Colorado Revised Statutes, 38-12-503, **amend**
6 (2) and (4); and **add** (2.3) and (2.5) as follows:

7 **38-12-503. Warranty of habitability.** (2) A landlord breaches
8 the warranty of habitability set forth in subsection (1) of this section if:

9 (a) A residential premises is:

10 (I) Uninhabitable as described in section 38-12-505 or otherwise
11 unfit for human habitation; ~~and~~ OR

12 ~~(b)~~ (II) ~~The residential premises is~~ In a condition that is materially
13 dangerous or hazardous to the tenant's life, health, or safety; and

14 ~~(c)~~ (b) The landlord has received **REASONABLY COMPLETE** written
15 OR ELECTRONIC notice of the condition described in ~~paragraphs (a) and~~
16 ~~(b) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION and failed
17 to ~~cure the problem~~ COMMENCE REMEDIAL ACTION BY EMPLOYING
18 REASONABLE EFFORTS ~~within a reasonable time~~ THE FOLLOWING PERIOD
19 AFTER RECEIVING THE NOTICE:

20 (I) TWENTY-FOUR HOURS, WHERE THE CONDITION IS AS DESCRIBED
21 IN SUBSECTION (2)(a)(II) OF THIS SECTION; OR

22 (II) SEVENTY-TWO HOURS, WHERE THE CONDITION IS AS
23 DESCRIBED IN SUBSECTION (2)(a)(I) OF THIS SECTION.

24 **(2.3)** A TENANT WHO GIVES ELECTRONIC NOTICE OF A CONDITION
25 AS DESCRIBED IN SUBSECTION (2)(b) OF THIS SECTION SHALL RETAIN
26 SUFFICIENT PROOF OF DELIVERY.

27 **(2.5)** A LANDLORD WHO RECEIVES FROM A TENANT WRITTEN OR

1 ELECTRONIC NOTICE OF A CONDITION DESCRIBED BY SUBSECTION (2)(a) OF
2 THIS SECTION SHALL RESPOND TO THE TENANT NOT MORE THAN
3 TWENTY-FOUR HOURS AFTER RECEIVING THE NOTICE. THE RESPONSE MUST
4 INDICATE THE LANDLORD'S INTENTIONS FOR REMEDYING THE CONDITION,
5 INCLUDING AN ESTIMATE OF WHEN THE REMEDIATION WILL COMMENCE
6 AND WHEN IT WILL BE COMPLETED.

7 (4) (a) ~~In response to~~ If the notice sent pursuant to ~~paragraph (c)~~
8 ~~of subsection (2)~~ SUBSECTION (2)(b) of this section CONCERNS A
9 CONDITION THAT IS DESCRIBED BY SUBSECTION (2)(a)(II) OF THIS SECTION,
10 ~~a~~ THE landlord, ~~may, in the landlord's discretion~~ AT THE REQUEST OF THE
11 TENANT, SHALL ~~move a~~ PROVIDE THE tenant: ~~to~~

12 (I) A comparable DWELLING unit, ~~after paying the reasonable~~
13 ~~costs, actually incurred, incident to the move.~~ AS SELECTED BY THE
14 LANDLORD, AT NO EXPENSE OR COST TO THE TENANT; OR

15 (II) A HOTEL ROOM, AS SELECTED BY THE LANDLORD, AT NO
16 EXPENSE OR COST TO THE TENANT.

17 (b) A LANDLORD IS NOT REQUIRED TO PAY FOR ANY OTHER
18 EXPENSES OF A TENANT THAT ARISE AFTER THE RELOCATION PERIOD. A
19 TENANT CONTINUES TO BE RESPONSIBLE FOR PAYMENT OF RENT UNDER
20 THE RENTAL AGREEMENT DURING THE PERIOD OF ANY TEMPORARY
21 RELOCATION AND FOR THE REMAINDER OF THE TERM OF THE RENTAL
22 AGREEMENT FOLLOWING THE REMEDIATION.

23

24 **SECTION 4.** In Colorado Revised Statutes, 38-12-505, **amend**
25 (1) and (3) as follows:

26 **38-12-505. Uninhabitable residential premises.** (1) A
27 residential premises is deemed uninhabitable if:

1 (a) THERE IS MOLD THAT IS ASSOCIATED WITH DAMPNES, OR
2 THERE IS ANY OTHER CONDITION CAUSING THE PREMISES TO BE DAMP,
3 WHICH CONDITION, IF NOT REMEDIED, WOULD MATERIALLY INTERFERE
4 WITH THE HEALTH OR SAFETY OF THE TENANT; OR

5 (b) It substantially lacks any of the following characteristics:

6 (I) FUNCTIONING APPLIANCES THAT CONFORMED TO APPLICABLE
7 LAW AT THE TIME OF INSTALLATION AND THAT ARE MAINTAINED IN GOOD
8 WORKING ORDER;

9 (a) (II) Waterproofing and weather protection of roof and exterior
10 walls maintained in good working order, including unbroken windows
11 and doors;

12 (b) (III) Plumbing or gas facilities that conformed to applicable
13 law in effect at the time of installation and that are maintained in good
14 working order;

15 (c) (IV) Running water and reasonable amounts of hot water at all
16 times furnished to appropriate fixtures and connected to a sewage
17 disposal system approved under applicable law;

18 (d) (V) Functioning heating facilities that conformed to applicable
19 law at the time of installation and that are maintained in good working
20 order;

21 (e) (VI) Electrical lighting, with wiring and electrical equipment
22 that conformed to applicable law at the time of installation, maintained in
23 good working order;

24 (f) (VII) Common areas and areas under the control of the
25 landlord that are kept reasonably clean, sanitary, and free from all
26 accumulations of debris, filth, rubbish, and garbage and that have
27 appropriate extermination in response to the infestation of rodents or

1 vermin;

2 (g) (VIII) Appropriate extermination in response to the infestation
3 of rodents or vermin throughout a residential premises;

4 (h) (IX) An adequate number of appropriate exterior receptacles
5 for garbage and rubbish, in good repair;

6 (i) (X) Floors, stairways, and railings maintained in good repair;

7 (j) (XI) Locks on all exterior doors and locks or security devices
8 on windows designed to be opened that are maintained in good working
9 order; or

10 (k) (XII) Compliance with all applicable building, housing, and
11 health codes, THE VIOLATION OF which ~~if violated~~, would constitute a
12 condition that is ~~dangerous or hazardous to a tenant's life, health, or safety~~
13 MATERIALLY INTERFERES WITH THE LIFE, HEALTH, OR SAFETY OF THE
14 TENANT.

15 (3) Unless THE RENTAL AGREEMENT PROVIDES otherwise stated in
16 AS PERMITTED BY section 38-12-506, ~~prior to being~~ BEFORE A
17 RESIDENTIAL PREMISES IS leased to a tenant, ~~a residential~~ THE premises
18 must comply with the requirements set forth in section 38-12-503 (1) AND
19 (2)(a). ~~and (2)(b)~~.

20 **SECTION 5.** In Colorado Revised Statutes, **repeal and reenact,**
21 **with amendments,** 38-12-506 as follows:

22 **38-12-506. Exception for certain single-family residences.**

23 (1) FOR A SINGLE-FAMILY RESIDENCE PREMISES FOR WHICH A LANDLORD
24 DOES NOT RECEIVE A SUBSIDY FROM ANY GOVERNMENTAL SOURCE, A
25 LANDLORD AND TENANT MAY AGREE IN WRITING THAT THE TENANT IS TO
26 PERFORM SPECIFIC REPAIRS, MAINTENANCE TASKS, ALTERATIONS, AND
27 REMODELING NECESSARY TO COMPLY WITH SECTION 38-12-503, SUBJECT

1 TO THE FOLLOWING REQUIREMENTS:

2 (a) THE AGREEMENT OF THE LANDLORD AND TENANT IS ENTERED
3 INTO IN GOOD FAITH AND IS SET FORTH IN A WRITING THAT IS SEPARATE
4 FROM THE RENTAL AGREEMENT, SIGNED BY THE PARTIES, AND SUPPORTED
5 BY ADEQUATE CONSIDERATION; AND

6 (b) THE TENANT HAS THE REQUISITE SKILLS TO PERFORM THE
7 WORK REQUIRED TO COMPLY WITH SECTION 38-12-503 (1).

8 (2) TO THE EXTENT THAT PERFORMANCE BY A TENANT RELATES TO
9 A CHARACTERISTIC SET FORTH IN SECTION 38-12-505 (1), THE TENANT
10 ASSUMES THE OBLIGATION FOR THE CHARACTERISTIC, AND THE LACK OF
11 THE CHARACTERISTIC DOES NOT MAKE THE RESIDENTIAL PREMISES
12 UNINHABITABLE.

13 **SECTION 6.** In Colorado Revised Statutes, 38-12-507, **amend**
14 (1) introductory portion and (1)(b); and **add** (1)(e) and (3) as follows:

15 **38-12-507. Breach of warranty of habitability - tenant's**
16 **remedies.** (1) If there is a breach of the warranty of habitability as set
17 forth in section 38-12-503 (2): ~~the following provisions shall apply:~~

18 (b) (I) A tenant may obtain injunctive relief for breach of the
19 warranty of habitability in any COUNTY OR DISTRICT court of competent
20 jurisdiction. In ~~any~~ A proceeding for injunctive relief, the court shall
21 determine actual damages for a breach of the warranty at the time the
22 court orders the injunctive relief. A landlord ~~shall~~ IS NOT ~~be~~ subject to any
23 court order for injunctive relief if:

24 (A) The landlord tenders the actual damages to the court within
25 two business days ~~of~~ AFTER the order; AND

26 (B) THE PROCEEDING FOR INJUNCTIVE RELIEF DOES NOT CONCERN
27 A CONDITION DESCRIBED IN SECTION 38-12-503 (2)(a)(II) THAT HAS NOT

1 BEEN REPAIRED OR REMEDIED.

2 (II) Upon application by the tenant, the court shall immediately
3 release to the tenant the damages paid by the landlord. If the tenant
4 vacates the leased premises, the landlord shall not be permitted to rent the
5 premises again until ~~such time as the unit would be in compliance~~
6 COMPLIES with the warranty of habitability set forth in section 38-12-503
7 (1).

8 (e) (I) PURSUANT TO THIS SUBSECTION (1)(e), THE TENANT MAY
9 DEDUCT FROM ONE OR MORE RENT PAYMENTS THE COST OF REPAIRING OR
10 REMEDYING A CONDITION THAT IS THE BASIS OF A BREACH OF THE
11 WARRANTY OF HABITABILITY DESCRIBED IN SECTION 38-12-503, IF THE
12 TENANT PROVIDES NOTICE OF THE CONDITION TO THE LANDLORD AS
13 DESCRIBED IN SECTION 38-12-503 (2)(b) AND THE LANDLORD FAILS TO
14 COMMENCE REMEDIAL ACTION BY EMPLOYING REASONABLE EFFORTS
15 WITHIN THE APPLICABLE PERIOD DESCRIBED IN SECTION 38-12-503 (2)(b).

16 (II) AT LEAST TEN DAYS BEFORE DEDUCTING COSTS FROM A RENT
17 PAYMENT AS DESCRIBED IN THIS SUBSECTION (1)(e), A TENANT SHALL
18 PROVIDE THE LANDLORD WITH WRITTEN OR ELECTRONIC NOTICE OF THE
19 TENANT'S INTENT TO DO SO. THE NOTICE MUST SPECIFY THE DATE OF
20 NOTIFICATION, THE NAME OF THE LANDLORD OR PROPERTY MANAGER, THE
21 ADDRESS OF THE RENTAL PROPERTY, THE CONDITION THAT REQUIRES A
22 REPAIR OR REMEDY, THE DATE UPON WHICH THE TENANT PROVIDED
23 NOTICE TO THE LANDLORD OF THE CONDITION THAT REQUIRES A REPAIR OR
24 REMEDY, AND A COPY OF AT LEAST ONE GOOD-FAITH ESTIMATE OF COSTS
25 TO REPAIR OR REMEDY THE CONDITION, WHICH ESTIMATE HAS BEEN
26 PREPARED BY A PROFESSIONAL WHO IS UNRELATED TO THE TENANT, IS
27 TRAINED TO PERFORM THE WORK FOR WHICH THE ESTIMATE IS BEING

1 PREPARED, AND COMPLIES WITH ALL LICENSING, CERTIFICATION, OR
2 REGISTRATION REQUIREMENTS OF THIS STATE THAT APPLY TO THE
3 PERFORMANCE OF THE WORK. A TENANT WITHHOLDING RENT OVER
4 MULTIPLE PAYMENT PERIODS IS REQUIRED TO PROVIDE NOTICE ONLY ONCE.
5 THE TENANT SHALL RETAIN A COPY OF THE NOTICE.

6 (III) AFTER A TENANT PROVIDES A LANDLORD NOTICE OF THE
7 TENANT'S INTENT TO DEDUCT COSTS PURSUANT TO SUBSECTION (1)(e)(II)
8 OF THIS SECTION, THE LANDLORD HAS TWO BUSINESS DAYS TO OBTAIN ONE
9 OR MORE GOOD-FAITH ESTIMATES OF SUCH COSTS IN ADDITION TO ANY
10 ESTIMATE THAT THE TENANT INCLUDED IN THE NOTICE. THE ESTIMATE
11 MUST BE PREPARED BY A PROFESSIONAL WHO IS UNRELATED TO THE
12 LANDLORD, IS TRAINED TO PERFORM THE WORK FOR WHICH THE ESTIMATE
13 IS BEING PREPARED, AND COMPLIES WITH ALL LICENSING, CERTIFICATION,
14 OR REGISTRATION REQUIREMENTS OF THIS STATE THAT APPLY TO THE
15 PERFORMANCE OF THE WORK. IF THE LANDLORD PREFERS TO REPAIR OR
16 REMEDY THE CONDITION BY HIRING A PROFESSIONAL OTHER THAN A
17 PROFESSIONAL WHO PREPARED AN ESTIMATE FOR THE TENANT, THE
18 LANDLORD SHALL SHARE THE PREFERRED PROFESSIONAL'S ESTIMATE WITH
19 THE TENANT AND SHALL COMMENCE WORK TO REPAIR OR REMEDY THE
20 CONDITION AS SOON AS REASONABLY POSSIBLE.

21 (IV) IF THE LANDLORD DOES NOT OBTAIN ANY ADDITIONAL
22 ESTIMATES WITHIN THE TWO DAYS PRESCRIBED BY SUBSECTION (1)(e)(III)
23 OF THIS SECTION, THE TENANT MAY PROCEED TO DEDUCT COSTS FROM ONE
24 OR MORE RENT PAYMENTS, BASED ON THE ESTIMATE ACQUIRED BY THE
25 TENANT, UNTIL THE ENTIRE AMOUNT OF THE ESTIMATE IS DEDUCTED.

26 (V) A TENANT WHO DEDUCTS COSTS PURSUANT TO SUBSECTION
27 (1)(e)(IV) OF THIS SECTION SHALL NOT REPAIR OR REMEDY THE CONDITION

1 BUT SHALL HIRE A PROFESSIONAL WHO IS UNRELATED TO THE TENANT, IS
2 TRAINED TO PERFORM THE WORK FOR WHICH THE ESTIMATE IS BEING
3 PREPARED, AND COMPLIES WITH ALL LICENSING, CERTIFICATION, OR
4 REGISTRATION REQUIREMENTS OF THIS STATE THAT APPLY TO THE
5 PERFORMANCE OF THE WORK.

6 (VI) IF A TENANT HIRES A PROFESSIONAL TO REPAIR OR REMEDY A
7 CONDITION CAUSING A BREACH OF THE WARRANTY OF HABITABILITY AND
8 DEDUCTS THE ESTIMATED COST OF SUCH REPAIR OR REMEDY FROM ONE OR
9 MORE RENT PAYMENTS, AS PERMITTED BY THIS SUBSECTION (1)(e), AND
10 THE DEDUCTED ESTIMATED COST EXCEEDS THE ACTUAL COST INCURRED
11 BY THE TENANT, THE TENANT SHALL REMIT THE EXCESS COST TO THE
12 LANDLORD WITHIN TEN BUSINESS DAYS.

13 (VII) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION
14 (1)(e) TO THE CONTRARY, A TENANT SHALL NOT DEDUCT COSTS FROM ONE
15 OR MORE RENT PAYMENTS IF THE CONDITION THAT IS THE BASIS FOR THE
16 ALLEGED BREACH OF THE WARRANTY OF HABITABILITY IS CAUSED BY THE
17 MISCONDUCT OF THE TENANT, A MEMBER OF THE TENANT'S HOUSEHOLD,
18 A GUEST OR INVITEE OF THE TENANT, OR A PERSON UNDER THE TENANT'S
19 DIRECTION OR CONTROL; EXCEPT THAT THIS SUBSECTION (1)(e)(VII) DOES
20 NOT APPLY IF:

21 (A) THE TENANT IS A VICTIM OF DOMESTIC VIOLENCE; DOMESTIC
22 ABUSE; UNLAWFUL SEXUAL BEHAVIOR, AS DESCRIBED IN SECTION
23 16-22-102 (9); OR STALKING;

24 (B) THE CONDITION IS THE RESULT OF DOMESTIC VIOLENCE;
25 DOMESTIC ABUSE; UNLAWFUL SEXUAL BEHAVIOR, AS DESCRIBED IN
26 SECTION 16-22-102 (9); OR STALKING; AND

27 (C) THE LANDLORD HAS BEEN GIVEN WRITTEN OR ELECTRONIC

1 NOTICE AND EVIDENCE OF DOMESTIC VIOLENCE; DOMESTIC ABUSE;
2 UNLAWFUL SEXUAL BEHAVIOR, AS DESCRIBED IN SECTION 16-22-102 (9);
3 OR STALKING.

4 (VIII) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION
5 (1)(e) TO THE CONTRARY, A TENANT SHALL NOT DEDUCT COSTS FROM ONE
6 OR MORE RENT PAYMENTS IF THE PREMISES ARE INSPECTED PERIODICALLY
7 BY:

8 (A) THE REAL ESTATE ASSESSMENT CENTER WITHIN THE FEDERAL
9 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; OR

10 (B) A STATE OR LOCAL GOVERNMENT AGENCY CHARGED WITH THE
11 ADMINISTRATION OF THE FEDERAL HOUSING CHOICE VOUCHER PROGRAM
12 OF THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
13 DESCRIBED AT 24 CFR 982.1, ET SEQ., AND THE ENFORCEMENT OF THE
14 HOUSING QUALITY STANDARDS DESCRIBED AT 24 CFR 982.401, ET SEQ.

15 (IX) A TENANT WHO DEDUCTS COSTS FROM ONE OR MORE RENT
16 PAYMENTS IN ACCORDANCE WITH THIS SUBSECTION (1)(e) MAY SEEK
17 ADDITIONAL REMEDIES PROVIDED BY THIS SECTION.

18 (X) IF A COURT FINDS THAT A TENANT HAS WRONGFULLY
19 DEDUCTED RENT, THE COURT SHALL AWARD THE LANDLORD AN AMOUNT
20 OF MONEY EQUAL TO THE AMOUNT WRONGFULLY WITHHELD. IF THE COURT
21 FINDS THAT THE TENANT ACTED IN BAD FAITH, THE COURT SHALL AWARD
22 THE LANDLORD POSSESSION OF THE PREMISES AND AN AMOUNT OF MONEY
23 EQUAL TO DOUBLE THE AMOUNT WRONGFULLY WITHHELD.

24 (XI) A TENANT WHO DEDUCTS RENT AS A RESULT OF A BREACH OF
25 THE WARRANTY OF HABITABILITY, WHICH BREACH IS BASED ON A
26 CONDITION DESCRIBED IN SECTION 38-12-505 (1)(b)(I), MAY, IN LIEU OF
27 REPAIRING THE MALFUNCTIONING APPLIANCE, REPLACE THE

1 MALFUNCTIONING APPLIANCE SO LONG AS THE REPLACEMENT APPLIANCE
2 IS AT LEAST OF SUBSTANTIALLY COMPARABLE QUALITY AND HAS
3 SUBSTANTIALLY THE SAME FEATURES AS THE ORIGINAL APPLIANCE.

4 (3) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION:

5 (a) IF THE SAME CONDITION THAT SUBSTANTIALLY CAUSED A
6 BREACH OF THE WARRANTY OF HABITABILITY RECURS WITHIN SIX MONTHS
7 AFTER THE CONDITION IS REPAIRED OR REMEDIED, OTHER THAN A BREACH
8 OF SECTION 38-12-505 (1)(b)(I), THE TENANT MAY TERMINATE THE
9 RENTAL AGREEMENT FOURTEEN DAYS AFTER PROVIDING THE LANDLORD
10 WRITTEN OR ELECTRONIC NOTICE OF THE TENANT'S INTENT TO DO SO. THE
11 NOTICE MUST INCLUDE A DESCRIPTION OF THE CONDITION AND THE DATE
12 OF THE TERMINATION OF THE RENTAL AGREEMENT.

13 (b) IF THE SAME CONDITION THAT SUBSTANTIALLY CAUSED A
14 BREACH OF THE WARRANTY OF HABITABILITY RECURS WITHIN SIX MONTHS
15 AFTER THE CONDITION IS REPAIRED OR REMEDIED, AND THE CONDITION IS
16 A BREACH OF SECTION 38-12-505 (1)(b)(I), THE TENANT MAY TERMINATE
17 THE RENTAL AGREEMENT FOURTEEN DAYS AFTER PROVIDING THE
18 LANDLORD WRITTEN OR ELECTRONIC NOTICE OF THE TENANT'S INTENT TO
19 DO SO. THE NOTICE MUST INCLUDE A DESCRIPTION OF THE CONDITION AND
20 THE DATE OF THE TERMINATION OF THE RENTAL AGREEMENT. HOWEVER,
21 IF THE LANDLORD REMEDIES THE CONDITION WITHIN FOURTEEN DAYS
22 AFTER RECEIVING THE NOTICE, THE TENANT MAY NOT TERMINATE THE
23 RENTAL AGREEMENT.

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

26 **38-12-508. Landlord's defenses to a claim of breach of**
27 **warranty - limitations on claiming a breach. (3) A tenant may not**

1 assert a claim for injunctive relief based upon the landlord's breach of the
2 warranty of habitability of a residential premises unless the tenant has
3 given notice to a local government within the boundaries of which the
4 residential premises is located of the condition underlying the breach that
5 is materially dangerous or hazardous to the tenant's life, health, or safety.

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

11 **SECTION 8.** In Colorado Revised Statutes, **amend** 38-12-509 as
12 follows:

13 **38-12-509. Prohibition on retaliation.** (1) A landlord shall not
14 retaliate against a tenant ~~for alleging a breach of the warranty of~~
15 ~~habitability~~ by discriminatorily increasing rent or decreasing services or
16 by bringing or threatening to bring an action for possession in response
17 to the tenant:

18 (a) Having made a good faith complaint to the landlord or to a
19 governmental agency alleging a ~~breach of the warranty of habitability~~
20 CONDITION DESCRIBED BY SECTION 38-12-505 (1) OR ANY CONDITION
21 THAT MATERIALLY INTERFERES WITH THE LIFE, HEALTH, OR SAFETY OF THE
22 TENANT; OR

23 (b) ORGANIZING OR BECOMING A MEMBER OF A TENANTS'
24 ASSOCIATION OR SIMILAR ORGANIZATION.

25 (2) ~~A landlord shall not be liable for retaliation under this section~~
26 ~~unless a tenant proves that a landlord breached the warranty of~~
27 ~~habitability~~ IF A LANDLORD RETALIATES AGAINST A TENANT IN VIOLATION

1 OF SUBSECTION (1) OF THIS SECTION, THE TENANT MAY TERMINATE THE
2 RENTAL AGREEMENT AND RECOVER AN AMOUNT NOT MORE THAN THREE
3 MONTHS' PERIODIC RENT OR THREE TIMES THE TENANT'S ACTUAL
4 DAMAGES, WHICHEVER IS GREATER, PLUS REASONABLE ATTORNEY FEES
5 AND COSTS.

6 (3) ~~Regardless of when an action for possession of the premises~~
7 ~~where the landlord is seeking to terminate the tenancy for violation of the~~
8 ~~terms of the rental agreement is brought, there shall be a rebuttable~~
9 ~~presumption in favor of the landlord that his or her decision to terminate~~
10 ~~is not retaliatory. The presumption created by this subsection (3) cannot~~
11 ~~be rebutted by evidence of the timing alone of the landlord's initiation of~~
12 ~~the action.~~ IF A LANDLORD ELECTS TO REPLACE A MALFUNCTIONING
13 APPLIANCE, BUT DOES SO WITH A NEW APPLIANCE THAT IS NOT IDENTICAL
14 TO THE APPLIANCE BEING REPLACED, THERE IS A REBUTTABLE
15 PRESUMPTION IN FAVOR OF THE LANDLORD THAT THE LANDLORD'S
16 SELECTION OF A DIFFERENT APPLIANCE WAS NOT RETALIATORY SO LONG
17 AS THE REPLACEMENT APPLIANCE PROVIDES SUBSTANTIALLY THE SAME
18 FEATURES AS THE ORIGINAL APPLIANCE.

19 (4) ~~If the landlord has a right to increase rent, to decrease service,~~
20 ~~or to terminate the tenant's tenancy at the end of any term of the rental~~
21 ~~agreement and the landlord exercises any of these rights, there shall be a~~
22 ~~rebuttable presumption that the landlord's exercise of any of these rights~~
23 ~~was not retaliatory. The presumption of this subsection (4) cannot be~~
24 ~~rebutted by evidence of the timing alone of the landlord's exercise of any~~
25 ~~of these rights.~~

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

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