

CHAPTER 229

PROPERTY

HOUSE BILL 19-1170

BY REPRESENTATIVE(S) Jackson and Weissman, Buckner, Buentello, Duran, Exum, Froelich, Galindo, Gonzales-Gutierrez, Herod, Kennedy, Kipp, Lontine, Melton, Michaelson Jenet, Singer, Sirota, Snyder, Titone, Valdez A., Bird, Caraveo, Hooton; also SENATOR(S) Williams A. and Bridges, Court, Gonzales, Moreno, Pettersen, Rodriguez, Winter.

AN ACT**CONCERNING INCREASING TENANT PROTECTIONS RELATING TO THE RESIDENTIAL WARRANTY OF HABITABILITY.**

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

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

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

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

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

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

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

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

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

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

(6) "MOLD" MEANS MICROSCOPIC ORGANISMS OR FUNGI THAT CAN GROW IN DAMP CONDITIONS IN THE INTERIOR OF A BUILDING.

~~(4)~~ (7) "Rental agreement" means the agreement, written or oral, embodying the terms and conditions concerning the use and occupancy of a residential premises.

~~(5)~~ (8) "Residential premises" means a dwelling unit, the structure of which the unit is a part, and the common areas.

~~(6)~~ (9) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

SECTION 3. In Colorado Revised Statutes, 38-12-503, **amend** (2), (3), and (4); and **add** (2.2), (2.3), and (2.5) as follows:

38-12-503. Warranty of habitability. (2) EXCEPT AS DESCRIBED IN SUBSECTION (2.2) OF THIS SECTION, a landlord breaches the warranty of habitability set forth in subsection (1) of this section if:

(a) A residential premises is:

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

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

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

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

(II) NINETY-SIX HOURS, WHERE THE CONDITION IS AS DESCRIBED IN SUBSECTION (2)(a)(I) OF THIS SECTION AND THE TENANT HAS INCLUDED WITH THE NOTICE PERMISSION TO THE LANDLORD OR TO THE LANDLORD'S AUTHORIZED AGENT TO ENTER THE RESIDENTIAL PREMISES.

(2.2) IN A CASE IN WHICH A RESIDENTIAL PREMISES HAS MOLD THAT IS ASSOCIATED WITH DAMPNES, OR THERE IS ANY OTHER CONDITION CAUSING THE RESIDENTIAL PREMISES TO BE DAMP, WHICH CONDITION, IF NOT REMEDIED, WOULD MATERIALLY INTERFERE WITH THE LIFE, HEALTH, OR SAFETY OF A TENANT, A LANDLORD BREACHES THE WARRANTY OF HABITABILITY IF THE LANDLORD FAILS:

(a) WITHIN NINETY-SIX HOURS AFTER RECEIVING REASONABLY COMPLETE WRITTEN OR ELECTRONIC NOTICE OF THE CONDITION, TO MITIGATE IMMEDIATE RISK FROM MOLD BY INSTALLING A CONTAINMENT, STOPPING ACTIVE SOURCES OF WATER TO THE MOLD, AND INSTALLING A HIGH-EFFICIENCY PARTICULATE AIR FILTRATION DEVICE TO REDUCE TENANTS' EXPOSURE TO MOLD;

(b) TO MAINTAIN THE CONTAINMENT DESCRIBED IN SUBSECTION (2.2)(a) OF THIS SECTION UNTIL THE ACTIONS DESCRIBED IN SUBSECTION (2.2)(c) OF THIS SECTION ARE EXECUTED; AND

(c) WITHIN A REASONABLE AMOUNT OF TIME, TO EXECUTE THE FOLLOWING REMEDIAL ACTIONS TO REMOVE THE HEALTH RISK POSED BY MOLD:

(I) ESTABLISH APPROPRIATE PROTECTIONS FOR WORKERS AND OCCUPANTS;

(II) ELIMINATE OR LIMIT MOISTURE SOURCES AND DRY ALL MATERIALS;

(III) DECONTAMINATE OR REMOVE DAMAGED MATERIALS AS APPROPRIATE;

(IV) EVALUATE WHETHER THE PREMISES HAS BEEN SUCCESSFULLY REMEDIATED; AND

(V) REASSEMBLE THE PREMISES TO CONTROL SOURCES OF MOISTURE AND NUTRIENTS AND THEREBY PREVENT OR LIMIT THE RECURRENCE OF MOLD.

(2.3) A TENANT WHO GIVES A LANDLORD ELECTRONIC NOTICE OF A CONDITION SHALL SEND SUCH NOTICE ONLY TO THE E-MAIL ADDRESS, PHONE NUMBER, OR ELECTRONIC PORTAL SPECIFIED BY THE LANDLORD IN THE RENTAL AGREEMENT FOR COMMUNICATIONS. IN THE ABSENCE OF SUCH A PROVISION IN THE RENTAL AGREEMENT, THE TENANT SHALL COMMUNICATE WITH THE LANDLORD IN A MANNER THAT THE LANDLORD HAS PREVIOUSLY USED TO COMMUNICATE WITH THE TENANT.

THE TENANT SHALL RETAIN SUFFICIENT PROOF OF DELIVERY OF THE ELECTRONIC NOTICE.

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

(3) When any condition described in subsection (2) of this section is caused by the misconduct of the tenant, a member of the tenant's household, a guest or invitee of the tenant, or a person under the tenant's direction or control, the condition does not constitute a breach of the warranty of habitability. It is not misconduct by a victim of domestic violence; domestic abuse; unlawful sexual behavior, as described in section 16-22-102 (9); or stalking under this subsection (3) if the condition is the result of domestic violence; domestic abuse; unlawful sexual behavior, as described in section 16-22-102 (9); or stalking and the landlord has been given written OR ELECTRONIC notice and evidence of domestic violence; domestic abuse; unlawful sexual behavior, as described in section 16-22-102 (9); or stalking, as described in section 38-12-402 (2)(a).

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

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

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

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

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

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

(a) THERE IS MOLD THAT IS ASSOCIATED WITH DAMPNESS, OR THERE IS ANY OTHER CONDITION CAUSING THE RESIDENTIAL PREMISES TO BE DAMP, WHICH CONDITION, IF NOT REMEDIED, WOULD MATERIALLY INTERFERE WITH THE HEALTH OR SAFETY OF THE TENANT, EXCLUDING THE PRESENCE OF MOLD THAT IS MINOR AND FOUND ON SURFACES THAT CAN ACCUMULATE MOISTURE AS PART OF THEIR PROPER

FUNCTIONING AND INTENDED USE; OR

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

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

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

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

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

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

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

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

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

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

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

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

(XII) Compliance with all applicable building, housing, and health codes, THE VIOLATION OF WHICH ~~IF VIOLATED,~~ WOULD CONSTITUTE A CONDITION THAT IS ~~dangerous or hazardous to a tenant's life, health, or safety~~ MATERIALLY INTERFERES WITH THE LIFE, HEALTH, OR SAFETY OF THE TENANT.

(3) Unless THE RENTAL AGREEMENT PROVIDES ~~otherwise stated in~~ AS PERMITTED BY SECTION 38-12-506, ~~prior to being~~ BEFORE A RESIDENTIAL PREMISES IS LEASED TO A TENANT, ~~a residential~~ THE RESIDENTIAL PREMISES MUST COMPLY WITH THE REQUIREMENTS SET FORTH IN SECTION 38-12-503 (1) AND (2)(a). ~~and (2)(b).~~

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

38-12-506. Exception for certain single-family residences. (1) FOR A SINGLE-FAMILY RESIDENCE PREMISES FOR WHICH A LANDLORD DOES NOT RECEIVE A SUBSIDY FROM ANY GOVERNMENTAL SOURCE, A LANDLORD AND TENANT MAY AGREE IN WRITING THAT THE TENANT IS TO PERFORM SPECIFIC REPAIRS, MAINTENANCE TASKS, ALTERATIONS, AND REMODELING NECESSARY TO COMPLY WITH SECTION 38-12-503, SUBJECT TO THE FOLLOWING REQUIREMENTS:

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

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

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

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

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

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

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

(B) THE PROCEEDING FOR INJUNCTIVE RELIEF DOES NOT CONCERN A CONDITION DESCRIBED IN SECTION 38-12-503 (2)(a)(II) THAT HAS NOT BEEN REPAIRED OR REMEDIED.

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

(e) (I) PURSUANT TO THIS SUBSECTION (1)(e), THE TENANT MAY DEDUCT FROM ONE OR MORE RENT PAYMENTS THE COST OF REPAIRING OR REMEDYING A CONDITION THAT IS THE BASIS OF A BREACH OF THE WARRANTY OF HABITABILITY DESCRIBED IN SECTION 38-12-503, IF THE TENANT PROVIDES NOTICE OF THE CONDITION TO THE LANDLORD AS DESCRIBED IN SECTION 38-12-503 (2)(b) OR (2.2) AND THE LANDLORD

FAILS TO:

(A) COMMENCE REMEDIAL ACTION BY EMPLOYING REASONABLE EFFORTS WITHIN THE APPLICABLE PERIOD DESCRIBED IN SECTION 38-12-503 (2)(b); OR

(B) COMPLETE THE ACTIONS DESCRIBED IN SECTION 38-12-503 (2.2).

(II) AT LEAST TEN DAYS BEFORE DEDUCTING COSTS FROM A RENT PAYMENT AS DESCRIBED IN THIS SUBSECTION (1)(e), A TENANT SHALL PROVIDE THE LANDLORD WITH WRITTEN OR ELECTRONIC NOTICE OF THE TENANT'S INTENT TO DO SO. THE NOTICE MUST SPECIFY THE DATE OF NOTIFICATION, THE NAME OF THE LANDLORD OR PROPERTY MANAGER, THE ADDRESS OF THE RENTAL PROPERTY, THE CONDITION THAT REQUIRES A REPAIR OR REMEDY, THE DATE UPON WHICH THE TENANT PROVIDED NOTICE TO THE LANDLORD OF THE CONDITION THAT REQUIRES A REPAIR OR REMEDY, AND A COPY OF AT LEAST ONE GOOD-FAITH ESTIMATE OF COSTS TO REPAIR OR REMEDY THE CONDITION, WHICH ESTIMATE HAS BEEN PREPARED BY A PROFESSIONAL WHO IS UNRELATED TO THE TENANT, IS TRAINED TO PERFORM THE WORK FOR WHICH THE ESTIMATE IS BEING PREPARED, AND COMPLIES WITH ALL LICENSING, CERTIFICATION, OR REGISTRATION REQUIREMENTS OF THIS STATE THAT APPLY TO THE PERFORMANCE OF THE WORK. A TENANT WITHHOLDING RENT OVER MULTIPLE PAYMENT PERIODS IS REQUIRED TO PROVIDE NOTICE ONLY ONCE. THE TENANT SHALL RETAIN A COPY OF THE NOTICE.

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

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

(V) A TENANT WHO DEDUCTS COSTS PURSUANT TO SUBSECTION (1)(e)(IV) OF THIS SECTION SHALL NOT REPAIR OR REMEDY THE CONDITION BUT SHALL HIRE A PROFESSIONAL WHO IS UNRELATED TO THE TENANT, IS TRAINED TO PERFORM THE WORK FOR WHICH THE ESTIMATE IS BEING PREPARED, AND COMPLIES WITH ALL LICENSING, CERTIFICATION, OR REGISTRATION REQUIREMENTS OF THIS STATE THAT APPLY TO THE PERFORMANCE OF THE WORK.

(VI) IF A TENANT HIRES A PROFESSIONAL TO REPAIR OR REMEDY A CONDITION

CAUSING A BREACH OF THE WARRANTY OF HABITABILITY AND DEDUCTS THE ESTIMATED COST OF SUCH REPAIR OR REMEDY FROM ONE OR MORE RENT PAYMENTS, AS PERMITTED BY THIS SUBSECTION (1)(e), AND THE DEDUCTED ESTIMATED COST EXCEEDS THE ACTUAL COST INCURRED BY THE TENANT, THE TENANT SHALL REMIT THE EXCESS COST TO THE LANDLORD WITHIN TEN BUSINESS DAYS.

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

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

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

(C) THE LANDLORD HAS BEEN GIVEN WRITTEN OR ELECTRONIC NOTICE AND EVIDENCE OF DOMESTIC VIOLENCE; DOMESTIC ABUSE; UNLAWFUL SEXUAL BEHAVIOR, AS DESCRIBED IN SECTION 16-22-102 (9); OR STALKING.

(VIII) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (1)(e) TO THE CONTRARY, A TENANT SHALL NOT DEDUCT COSTS FROM ONE OR MORE RENT PAYMENTS OR MAKE REPAIRS TO A RESIDENTIAL PREMISES IF THE RESIDENTIAL PREMISES WAS CONSTRUCTED, ACQUIRED, DEVELOPED, REHABILITATED, OR MAINTAINED WITH:

(A) FUNDING PROVIDED PURSUANT TO SECTION 8 OR 9 OF THE FEDERAL "UNITED STATES HOUSING ACT OF 1937", AS AMENDED, 42 U.S.C. SECS. 1437f AND 1437g;

(B) FUNDING FROM THE HOME INVESTMENT PARTNERSHIPS PROGRAM OF THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; OR

(C) FEDERAL LOW-INCOME HOUSING TAX CREDITS, COLORADO AFFORDABLE HOUSING TAX CREDITS, OR FUNDING PROVIDED UNDER ANY FEDERAL, STATE, OR LOCAL PROGRAM THAT RESTRICTS MAXIMUM RENTS FOR PERSONS OF LOW OR MODERATE INCOME AND THAT IS CURRENTLY SUBJECT TO A USE RESTRICTION THAT IS MONITORED TO ENSURE COMPLIANCE BY THE FEDERAL GOVERNMENT, THE STATE GOVERNMENT, A COUNTY GOVERNMENT, OR A MUNICIPAL GOVERNMENT, OR BY ANY POLITICAL SUBDIVISION OR DESIGNATED AGENCY THEREOF.

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

(X) IF A COURT FINDS THAT A TENANT HAS WRONGFULLY DEDUCTED RENT, THE

COURT SHALL AWARD THE LANDLORD AN AMOUNT OF MONEY EQUAL TO THE AMOUNT WRONGFULLY WITHHELD. IF THE COURT FINDS THAT THE TENANT ACTED IN BAD FAITH, THE COURT SHALL AWARD THE LANDLORD POSSESSION OF THE RESIDENTIAL PREMISES AND AN AMOUNT OF MONEY EQUAL TO DOUBLE THE AMOUNT WRONGFULLY WITHHELD.

(XI) A TENANT WHO DEDUCTS RENT AS A RESULT OF A BREACH OF THE WARRANTY OF HABITABILITY, WHICH BREACH IS BASED ON A CONDITION DESCRIBED IN SECTION 38-12-505 (1)(b)(I), MAY, IN LIEU OF REPAIRING THE MALFUNCTIONING APPLIANCE, REPLACE THE MALFUNCTIONING APPLIANCE SO LONG AS THE REPLACEMENT APPLIANCE IS AT LEAST OF SUBSTANTIALLY COMPARABLE QUALITY AND HAS SUBSTANTIALLY THE SAME FEATURES AS THE ORIGINAL APPLIANCE.

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

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

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

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

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

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

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

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

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

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

~~(2) A landlord shall not be liable for retaliation under this section unless a tenant proves that a landlord breached the warranty of habitability.~~ IF A LANDLORD RETALIATES AGAINST A TENANT IN VIOLATION OF SUBSECTION (1) OF THIS SECTION, THE TENANT MAY TERMINATE THE RENTAL AGREEMENT AND RECOVER AN AMOUNT NOT MORE THAN THREE MONTHS' PERIODIC RENT OR THREE TIMES THE TENANT'S ACTUAL DAMAGES, WHICHEVER IS GREATER, PLUS REASONABLE ATTORNEY FEES AND COSTS.

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

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

SECTION 9. In Colorado Revised Statutes, amend 38-12-801 as follows:

38-12-801. Written rental agreement - copy - tenant. (1) If there is a written rental agreement, ~~then~~ the landlord shall provide the tenant with a copy of the agreement that is signed by the landlord and the tenant, no later than the seventh day after the tenant has signed the agreement. A landlord may provide the tenant with an electronic copy of the agreement, unless the tenant requests a paper copy, in which case the landlord shall provide the tenant with a paper copy.

(2) A WRITTEN RENTAL AGREEMENT MUST INCLUDE A STATEMENT INDICATING TO

THE TENANT THE NAME AND ADDRESS OF THE PERSON WHO IS THE LANDLORD OR THE LANDLORD'S AUTHORIZED AGENT. IF THE IDENTITY OF A LANDLORD OR A LANDLORD'S AUTHORIZED AGENT CHANGES, THE NEW LANDLORD OR AUTHORIZED AGENT, NOT LATER THAN ONE BUSINESS DAY AFTER SUCH CHANGE, SHALL:

(a) PROVIDE EACH TENANT OF THE LANDLORD WRITTEN OR ELECTRONIC NOTICE OF THE CHANGE; OR

(b) POST THE IDENTITY OF THE NEW LANDLORD OR NEW AUTHORIZED AGENT IN A CONSPICUOUS LOCATION ON THE RESIDENTIAL PREMISES.

SECTION 10. Applicability. This act applies to conduct occurring on or after the effective date of this act.

SECTION 11. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 20, 2019