



# Colorado Law Summary: Renters' Rights<sup>1</sup>

As of November 2024, the Colorado General Assembly has been active over the past few years in addressing landlord-tenant issues. Much of the legislature's focus has been on renters' rights and providing tenants legal recourse against landlords for issues related to rental properties. The legislature has specified landlords' obligations toward their tenants and defined procedures for tenants to follow when landlords are not meeting those obligations. More specifically, recent legislation has focused on the return of security deposits to tenants, a landlord's obligation to maintain rental properties in a habitable condition, and procedures for evicting a tenant or terminating a rental agreement.

## 1. Security Deposit Return to Renters

### 1.1. Length of time for security deposit returns

According to section 38-12-103 (1), C.R.S., a landlord must return to a tenant the full security deposit within one month after the termination of the rental agreement or the surrender of the key to the leased property, whichever date is later, unless the rental agreement specifies a longer period. However, that longer period cannot be more than 60 days.<sup>2</sup>

### 1.2. Reasons for withholding security deposits

A landlord cannot withhold a tenant's security deposit for "normal wear and tear." A security deposit or a portion of a security deposit can be retained for the following reasons:

- Nonpayment of rent;

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<sup>1</sup> This summary contains information commonly requested from the Office of Legislative Legal Services. It does not represent an official legal opinion of the General Assembly or the state of Colorado and does not bind the members of the General Assembly. It is intended to provide a general overview of Colorado law as of the date of its preparation. Any person needing legal advice should consult the person's own lawyer and should not rely on the information in this memorandum.

<sup>2</sup> § 38-12-103 (1), C.R.S.

- Abandonment of the premises;
- Nonpayment of utility charges; or
- Nonpayment of repair work or cleaning contracted for by the tenant.<sup>3</sup>

If the landlord does not refund the entire security deposit, the landlord must provide the tenant with "a written statement listing the exact reasons for the retention of any portion of the security deposit,"<sup>4</sup> together with a payment equal to the amount of the security deposit, minus any amount retained. If the landlord fails to provide the written statement within the required time, the landlord forfeits all rights to withhold any portion of the security deposit.<sup>5</sup>

### **1.3. Security deposit amount**

A landlord cannot require a tenant to submit a security deposit in an amount that is more than two monthly rent payments under the rental agreement.<sup>6</sup> If a prospective or current tenant has a pet, a landlord is prohibited from demanding or receiving an additional pet security deposit from the prospective or current tenant in an amount that exceeds \$300.<sup>7</sup> Any additional pet security deposit must be refundable.

### **1.4. Tenant's legal recourse**

If a landlord intentionally retains a security deposit without a valid reason under statute, the landlord is obligated to pay three times the amount that was wrongfully withheld, plus court costs and reasonable attorney fees, but the tenant must notify the landlord of the tenant's intention to file legal proceedings at least seven days before taking action.<sup>8</sup> The landlord may avoid paying damages of three times the amount wrongfully withheld by returning the entire security deposit during this seven-day period. In any court action, the landlord has the burden of proving that the landlord did not wrongfully withhold all or part of the security deposit.<sup>9</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> § 38-12-103 (2), C.R.S.

<sup>6</sup> § 38-12-102.5, C.R.S.

<sup>7</sup> § 38-12-106 (1), C.R.S.

<sup>8</sup> § 38-12-103 (3)(a), C.R.S.

<sup>9</sup> § 38-12-103 (3)(b), C.R.S.

### **1.5. What happens to the security deposit if there is a new landlord?**

If a landlord sells the property a tenant is renting or otherwise loses legal title to or interest in the property, the tenant's security deposit must be transferred to the new landlord or transferee or returned to the tenant after any legal deductions.<sup>10</sup>

### **1.6. Tenant cannot waive rights**

A tenant cannot, either orally or in writing, waive the tenant's rights regarding the return of a security deposit under section 38-12-103, C.R.S. A rental agreement provision or other agreement that purports to waive those rights is not enforceable.<sup>11</sup>

## **2. Warranty of Habitability**

Colorado updated the state's warranty of habitability law in 2024. The updates to the warranty of habitability law focused on clarifying the rights and obligations of landlords and tenants and providing remedies for tenants who experience uninhabitable conditions at their residential premises.<sup>12</sup>

Colorado's warranty of habitability states that a landlord warrants that a residential premises is fit for human habitation at the inception of the tenant's occupancy and that the landlord will maintain the residential premises as fit for human habitation throughout the entire period the tenant lawfully occupies the residential premises.<sup>13</sup>

The landlord breaches the warranty of habitability if:

- A residential premises exhibits certain uninhabitable conditions or is in a condition that materially interferes with the tenant's life, health, or safety;
- The landlord has notice of the uninhabitable condition or condition that materially interferes with the tenant's life, health, or safety; and
- The landlord fails to commence or perform remedial action to repair or remedy the condition.<sup>14</sup>

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<sup>10</sup> § 38-12-103 (4), C.R.S. The requirement applies to any change in ownership, "whether by sale, assignment, death, appointment of a receiver, or otherwise."

<sup>11</sup> § 38-12-103 (7), C.R.S.

<sup>12</sup> § 38-12-501, C.R.S.

<sup>13</sup> § 38-12-503 (1), C.R.S.

<sup>14</sup> § 38-12-503 (2), C.R.S.

## **2.1. Uninhabitable conditions and conditions that materially interfere with a tenant's life, health, or safety**

There are two types of uninhabitable conditions — uninhabitable conditions that materially interfere with a tenant's life, health, or safety and regular uninhabitable conditions that do not materially interfere with a tenant's life, health, or safety.<sup>15</sup> Landlord responsibilities differ slightly depending on which type of uninhabitable condition is present at a residential premises, with those conditions that materially interfere with a tenant's life, health, or safety typically requiring the landlord to remedy the condition more quickly.

Whether a condition at a residential premises is a regular uninhabitable condition or an uninhabitable condition that materially interferes with a tenant's life, health, or safety depends on the specific conditions, residential premises, and tenants; however, the updates to the warranty of habitability in 2024 include descriptions of certain conditions that are categorized as either regular uninhabitable conditions or uninhabitable conditions that materially interfere with a tenant's life, health or safety.<sup>16</sup>

Regular uninhabitable conditions include but are not limited to:

- Mold that materially interferes with the health or safety of the tenant;
- A substantial lack of functioning appliances;
- Plumbing or gas facilities that are not maintained in good working order;
- Electrical lighting and electrical equipment that are not maintained in good working order; or
- General violations of applicable building, housing, and health codes.<sup>17</sup>

There is a rebuttable presumption that certain conditions materially interfere with a tenant's life, health, or safety, including but not limited to:

- Hazardous conditions of gas appliances, gas equipment, or gas facilities;
- Inadequate running water or inadequate running hot water;
- A lack of electricity, or hazardous conditions of electrical wiring, electrical facilities, electrical appliances, or other electrical equipment;

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<sup>15</sup> § 38-12-503 (2)(a), C.R.S.

<sup>16</sup> § 38-12-505, C.R.S. *See also* S.B. 24-094.

<sup>17</sup> § 38-12-505 (1)(b), C.R.S.

- A lack of working locks or security devices on exterior doors and windows; or
- An infestation of rodents, vermin, pests, or insects.<sup>18</sup>

## **2.2. Landlord must remedy or repair an uninhabitable condition**

When a residential premises exhibits uninhabitable conditions and the landlord has received notice that such conditions exist, the landlord must repair or remedy the condition.<sup>19</sup> For uninhabitable conditions that do not materially interfere with a tenant's life, health, or safety, the landlord must commence remedial action within 72 hours.<sup>20</sup> For uninhabitable conditions that materially interfere with a tenant's life, health, or safety, the landlord must commence remedial action within 24 hours.<sup>21</sup> The landlord must continue to perform remedial actions until the uninhabitable condition is completely remedied or repaired and must do so within a reasonable time.<sup>22</sup>

There is a rebuttable presumption that the landlord has failed to commence remedial action, continue performing remedial action, or completely remedy or repair an uninhabitable condition if the condition continues to exist:

- Seven calendar days after the landlord receives notice of the condition, if the condition materially interferes with the tenant's life, health, or safety; or
- Fourteen calendar days after the landlord receives notice of the condition, if the uninhabitable condition does not materially interfere with the tenant's life, health, or safety.<sup>23</sup>

If an uninhabitable condition materially interferes with a tenant's life, health, or safety, the landlord is required, within 24 hours of the tenant's request, to provide the tenant with a comparable dwelling unit or hotel room at no cost to the tenant while the landlord remedies or repairs the uninhabitable condition.<sup>24</sup>

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<sup>18</sup> § 38-12-505 (4), C.R.S.

<sup>19</sup> § 38-12-503 (4), C.R.S.

<sup>20</sup> § 38-12-503 (2)(b)(I)(B), C.R.S.

<sup>21</sup> § 38-12-503 (2)(b)(I)(A), C.R.S.

<sup>22</sup> § 38-12-503 (2)(b)(III), C.R.S.

<sup>23</sup> § 38-12-503 (3), C.R.S.

<sup>24</sup> § 38-12-503 (4), C.R.S.

### 2.3. Tenant's remedies and landlord's defenses

Once a breach of the warranty of habitability has been established, the tenant may pursue various statutory remedies. A tenant's remedies include termination of a rental agreement, deduction of rental payments, recovery of damages, and injunctive relief. The 2024 updates to the warranty of habitability also include ways that a landlord may defend against a claim of a breach of the warranty of habitability.

If the uninhabitable condition that causes the breach remains unremedied or unrepaired after a reasonable time, the tenant may terminate the rental agreement, provided that they give the landlord ten to sixty days' written notice of the tenant's intent to terminate the rental agreement and vacate the dwelling unit and the date on which the tenant will terminate the rental agreement, which date must be at least ten days after the date that the notice is provided to the landlord.<sup>25</sup> A tenant may also terminate a rental agreement if an uninhabitable condition that caused a breach of the warranty of habitability recurs within six months after the condition was originally remedied or repaired and the tenant provides the landlord with ten days' written notice of the tenant's intent to terminate the lease and vacate the dwelling unit.<sup>26</sup>

A tenant may deduct from one or more rental payments the cost of repairing or remedying a condition that is the basis of a breach of the warranty of habitability.<sup>27</sup> To deduct payment for the cost of repair, the tenant must provide the landlord with at least ten days' written notice (or 48 hours' written notice for conditions that materially interfere with a tenant's life, health, or safety), use a licensed or otherwise qualified professional to remedy or repair the condition, and allow the landlord the chance to repair or remedy the condition within the time frame provided in the tenant's notice.<sup>28</sup> A similar process exists if the tenant needs to replace a broken or malfunctioning appliance that causes an uninhabitable condition.<sup>29</sup>

Tenants may seek remedies from a court for breaches of the warranty of habitability. A tenant may recover from the landlord actual damages and be awarded punitive damages, court costs, and reasonable attorney fees as ordered by

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<sup>25</sup> § 38-12-507 (1)(a), C.R.S.

<sup>26</sup> § 38-12-507 (1)(b), C.R.S.

<sup>27</sup> § 38-12-507 (1)(c), C.R.S.

<sup>28</sup> § 38-12-507 (1)(c)(I), C.R.S.

<sup>29</sup> § 38-12-507 (1)(c)(II), C.R.S.

the court.<sup>30</sup> A court may also grant a tenant injunctive relieve, issue a temporary restraining order, or order the landlord to complete specific performance for a breach of the warranty of habitability.<sup>31</sup>

A landlord may defend against a tenant's claim of a breach of the warranty of habitability by claiming that the tenant's actions or inactions prevented the landlord from remedying or repairing the uninhabitable condition.<sup>32</sup> To use this defense against a tenant's breach claim, the landlord must demonstrate that the tenant denied entry to the dwelling unit, refused to provide a reasonable alternative time for entry into the dwelling unit, or engaged in any action or inaction that reasonably delayed or prevented the landlord from commencing or completing the repair or remedy of the uninhabitable condition.<sup>33</sup>

A tenant also has a duty to maintain the residential premises in a clean, safe, and habitable condition, and the landlord is not responsible for any uninhabitable conditions that are the result of the tenant's action, inaction, or negligence.<sup>34</sup>

#### **2.4. Prohibition on retaliation**

A landlord is prohibited from retaliating against a tenant who raises a warranty of habitability issue with a landlord, a third party, or a governmental agency regarding the condition of a residential premises.<sup>35</sup> A landlord is also prohibited from retaliating against a tenant who organizes or becomes a member of a tenants' organization or for exercising any other rights or remedies granted to tenants under the warranty of habitability.<sup>36</sup> Landlord actions that constitute retaliation against a tenant include:

- Increasing rent;
- Decreasing services provided to the tenant;
- Terminating or not renewing a rental agreement or contract without written consent of the tenant;

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<sup>30</sup> § 38-12-507 (1)(d), C.R.S.

<sup>31</sup> § 38-12-507 (1)(e) and (1)(f), C.R.S.

<sup>32</sup> § 38-12-508 (1), C.R.S.

<sup>33</sup> § 38-12-508 (1)(a), C.R.S.

<sup>34</sup> § 38-12-504, C.R.S.

<sup>35</sup> § 38-12-509 (1)(a)(I), C.R.S.

<sup>36</sup> § 38-12-509 (1)(a)(II) and (1)(a)(III), C.R.S.

- Bringing or threatening to bring an action for possession or eviction of the tenant;
- Charging the tenant any fee, cost, or penalty; or
- Taking action that intimidates, threatens, discriminates against, or harasses the tenant.<sup>37</sup>

The prohibition on retaliation does not preclude a landlord from serving a tenant with a notice to terminate tenancy or notice to vacate to the extent allowable under Colorado law.<sup>38</sup> However, the tenant may assert that the landlord is retaliating against the tenant as a defense against the landlord's action for possession.<sup>39</sup> If a landlord retaliates against a tenant, the tenant is entitled to damages and any reasonable attorney fees and costs and may also terminate the rental agreement.<sup>40</sup>

### **3. Termination and Eviction**

With the passage of H.B. 24-1098, the Colorado General Assembly updated laws regarding eviction of residential tenants. The updated laws require that a landlord have cause for eviction of a residential tenant before serving the tenant with a notice to terminate tenancy or with an action for possession.<sup>41</sup> A landlord may terminate a tenancy or demand possession of a property if the landlord has cause to do so (a "for cause" eviction) or under certain circumstances that constitute a "no-fault" eviction.<sup>42</sup>

Statute defines instances in which a tenant has committed an unlawful detention of a property and therefore the landlord has cause to terminate the tenancy, demand possession, or otherwise proceed with an action for unlawful detainer.<sup>43</sup> There are 13 situations defined in statute as of November 2024 where a landlord is considered to have cause to evict a tenant, such as:

- When a tenant continues to possess the property or residential premises after the expiration of the term of the rental agreement;

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<sup>37</sup> § 38-12-509 (1)(b), C.R.S.

<sup>38</sup> § 38-12-509 (5), C.R.S.

<sup>39</sup> § 38-12-509 (1.5), C.R.S.

<sup>40</sup> § 38-12-509 (2), C.R.S.

<sup>41</sup> § 38-12-1303 (1), C.R.S.

<sup>42</sup> § 38-12-1303 (2) and (3), C.R.S.

<sup>43</sup> § 38-12-1303 (2), C.R.S.



- When a tenant does not pay rent;
- When a tenant commits a material violation of the rental agreement; or
- When a tenant engages in conduct that creates a nuisance or disturbance or negligently damages the residential premises.<sup>44</sup>

There are also certain instances in which a landlord may conduct a "no-fault" eviction of a residential tenant.<sup>45</sup> "No-fault" evictions provide the landlord with options for terminating a rental agreement or evicting a tenant, in instances where the tenant is not at fault and is compliant with rental agreement terms, as long as the landlord complies with certain conditions. Instances of "no-fault" eviction include:

- The landlord plans to demolish or convert the residential premises;
- The landlord plans to make substantial repairs or renovations to the residential premises;
- The landlord, or a family member of the landlord, plans to use or occupy the residential premises;
- The landlord plans to remove the residential premises from the rental market for the purpose of selling the residential premises;
- The tenant refuses to sign a new rental agreement with reasonable terms; or
- The tenant demonstrates a history of nonpayment of rent or late rental payments.<sup>46</sup>

#### **4. Conclusion**

The Colorado General Assembly has been focused on housing issues during recent legislative sessions. This attention has translated to additional or updated laws regarding landlord-tenant arrangements. It has also resulted in more rights for tenants, especially in relation to security deposits, the warranty of habitability, and eviction of tenants.

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<sup>44</sup> *Id.*

<sup>45</sup> § 38-12-1303 (3), C.R.S.

<sup>46</sup> *Id.*