

# LAW SUMMARY

*Office of Legislative Legal Services*



## ***SECURITY DEPOSIT RETURNS***

### ***TO RENTERS***<sup>1</sup>

In 1971, the Colorado General Assembly passed a law giving renters a court remedy against landlords who withhold security deposits willfully and wrongfully.<sup>2</sup>

#### **Length of time for security deposit returns**

According to section 38-12-103 (1), C.R.S., a landlord must return to the tenant the full security deposit within one month after the termination of the lease or the surrender of the key to the leased property, whichever date is later, unless the lease agreement specifies a longer period. However, that longer period cannot be more than 60 days.<sup>3</sup>

#### **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;
- Abandonment of the premises;
- Nonpayment of utility charges;
- Nonpayment of repair work or cleaning contracted for by the tenant.<sup>4</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>5</sup> together with a payment equal to the amount of the security

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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.

The primary legal and factual source for the information contained in this memorandum is § 38-12-103, CR.S.

<sup>2</sup> L. 71: p.592, § 1; C.R.S. 1963: § 58-1-28.

<sup>3</sup> § 38-12-103 (1), C.R.S.

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

<sup>5</sup> *Id.*

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>6</sup>

### **The tenant's legal recourse**

If a landlord intentionally retains a security deposit without a valid reason under the statute, the landlord is obligated to pay three times the amount that was wrongfully withheld, plus court costs and reasonable attorney fees.<sup>7</sup> 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> This gives the landlord one last week to return the security deposit.<sup>9</sup> However, the landlord may avoid paying damages of three times the amount wrongfully withheld only by returning the entire security deposit during this last week. 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>10</sup>

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

If the landlord sells the property the 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>11</sup>

### **Tenant cannot waive rights**

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

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CREATED: 10/5/2015

REVIEWED: 10/1/2022

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<sup>6</sup> § 38-12-103 (2), C.R.S.

<sup>7</sup> § 38-12-103 (3)(a), C.R.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Turner v. Lyon*, 189 Colo. 234, 539 P.2d 1241 (1975); *Mishkin v. Young*, 107 P.3d 393 (Colo. 2005).

<sup>10</sup> § 38-12-103 (3)(b), C.R.S.

<sup>11</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>12</sup> § 38-12-103 (7), C.R.S.