

# TENANT-LANDLORD FACTS



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This pamphlet should not be used as a substitute for seeking needed advice from attorneys or other qualified advisors.

## **LEASES**

A written lease should protect both the landlord and the tenant. Most leases are either of six-month or one year duration. A standard lease form can be obtained in a book or stationery store. You can usually add special provisions to these forms to fit your special lease problems.

1. The least amount of problems will arise if both parties know and understand the terms of the lease. The landlord should explain these terms so that the tenant clearly understands them. If any portion of the lease is to be altered, both the landlord and the tenant should initial the change.
2. Both landlord and tenant should agree upon a “subletting” provision in the lease.
3. Some leases specify that the landlord can retain the security deposit if cleaning needs to be done by the landlord after the tenant vacates. In such cases both parties must be aware of the Colorado Security Deposit statute, which states that, “no security deposit shall be retained to cover normal wear and tear.” It also

defines “normal wear and tear.” Furthermore, this law states that if any provision of this statute for the benefit of the tenant is waived by the tenant in the lease or orally, it “shall be deemed to be against public policy and shall be void.” (C.R.S. 38-12-102,103). It remains for the court to determine from the merits and facts of each individual case as to whether the “cleaning” performed by the landlord was for purposes beyond “normal wear and tear.”

4. To avoid other common disputes, the lease should contain provisions setting forth who is responsible for:
  - All utilities
  - Repairs on appliances, plumbing, heating, etc.
  - Yard care, trash, snow removal, etc.
5. The lease should contain a fixed due date for rent. If there is to be grace period and late penalty fee, it should be specified in the lease. Any late penalty fee must be reasonable.
6. Where the landlord or tenant agrees to do any work or furnish materials connected with the premises, it should be in writing and should fix a time for completion. Also, the exact amount of rent reduction due the tenant for repairs should be fixed in writing and signed by both parties at the commencement of the lease.
7. If there is no written lease, the tenant is normally holding the premises on month-to-month tenancy, if the rent is paid monthly. If the tenant desires protection from a rent increase or eviction without grounds, the tenant should consider having a six-month to a year lease. However, if the tenant moves out before the end of the term of the written lease the tenant may be liable for the balance of the rent.

### **LANDLORD LIENS**

When some landlords are due money for rent they may assert a lien against the personal property of the tenant. (C.R.S. 38-20-102). Lien actions are generally complex and can result in considerable liability for the landlord. Therefore, landlords should consult an attorney before exercising a lien.

Some judges have held the landlord lien statute invalid, unconstitutional and have awarded damages to the tenant. However, until the Supreme Court decides the issue, many judges may enforce the statute.

1. According to Colorado Statute, the landlord of any apartment or room rented for housekeeping purposes has a lien on the personal property of the tenant except beds, bedding, small kitchen appliances, clothes, documents, and personal effects. C.R.S. 38-20-102(3)(a).
2. The statute also provides that the “keeper” of a hotel, inn, boardinghouse, etc. who rents “temporary shelter to transient guests” has a lien on all personal property except the car of a guest for unpaid rent plus costs. C.R.S. 38-20-102(3)(b).
3. The landlord must obtain the property by “peaceable” means. If the tenant or the tenant’s representative is present and objects it is not “peaceable.” C.R.S. 38-20-102(3)(c).
4. The landlord must follow legal procedure for lien foreclosure precisely as defined by statute or risk both losing the lien rights and entitling the tenant to damages.

### **LOCKOUT BY LANDLORD**

Under most circumstances, a landlord should not “lock out” a tenant for any reason without a court order. Whether or not the tenant has broken the lease, the landlord may be held responsible for interfering with the tenant’s right to “peaceable possession” until a legal court eviction.

1. The police may or may not intervene in a “lockout” in order to keep the peace. Although a tenant who has been illegally locked out may have a legal right to reenter with minimum damage to the locks, doing so may result in police involvement.
2. A landlord who illegally locks out a tenant risks being sued for damages and loses the right to exercise a lien (See Landlord Liens).

### **MOBILE HOMES**

For regulations concerning mobile homes, see Mobile Home Park-Landlord-Tenant Act. (C.R.S. 38-12-201).

## **DAMAGE DEPOSITS**

Security (damage) deposits may be used to pay rent if the tenant skips or fails to pay for any damages “beyond normal wear and tear” to the premises. (See also discussion under Leases #3.)

### **REQUIREMENTS:**

1. The landlord must return the damage deposit or send an itemized list of damages and costs of repair to the tenant’s last known address within 30 days after the tenant vacates. The lease may extend this time period up to 60 days. (C.R.S. 38-12-103).
2. If the landlord fails to send this letter within 30 days, the landlord loses all right to the damage deposit, even though there are damages. (C.R.S. 38-12-103).
3. If the landlord withholds the damage deposit in violation of Section 38-12-103, the landlord may be liable for treble the amount wrongfully and willfully withheld plus attorney fees and costs.
  - In this event, the tenant must first send the landlord a letter stating the tenant will sue for triple recovery if the damage deposit is not received within 7 days. After this period has elapsed, the tenant may commence a damage deposit suit.
  - In each county, a person may obtain information to start the suit by calling the Clerk of the County Court. The suit should be filed in the county where the landlord or his/her agent has offices. If the amount does not exceed \$7500, the suit can be heard in Small Claims Court where both sides appear without attorneys. Please contact the Summit Combined Courts to determine the cost of filing such a suit plus the cost of Service if the Sheriff serves the papers. The court may later order the losing party to pay these court costs.

## **EVICCTIONS**

### **THE LANDLORD MAY EVICT A TENANT FOR:**

1. **FAILURE TO PAY RENT ON TIME.** The landlord must first give the tenant a written notice demanding that the tenant either pay the rent or move out within ten days. (C.R.S. 13-40-104(1)(d))
  - If the tenant fails to pay or move, the landlord may, on the 11<sup>th</sup> day, commence an eviction proceeding in County Court (C.R.S. 13-40-110). Contact the Summit Combine Courts for the fee plus the cost of Service if the Sheriff serves the papers for the landlord.
  - These eviction papers will require that the tenant either file a response or appear in court within 7 to 14 days.
  - The tenant may contest the eviction if the tenant thinks there are legal grounds by filing an Answer on or before the time set by the Court. Contact the Summit Combined Courts for the filing fee. If the tenant files an Answer contesting the eviction, the case will be set for trial within approximately 7 days.
  - If the tenant fails to Answer or appear on the date indicated in the eviction papers, the tenant will then have 48 hours to vacate or be forcibly removed by the Sheriff’s Office.
2. **BREAKING ANY TERMS OF THE LEASE.** If the tenant breaks any of the written or oral terms of the lease, the tenant may be evicted in much the same manner as nonpayment of rent. (C.R.S. 13-40-104(1)(e)).
  - In such cases, the landlord obtains the proper form, which the landlord serves upon the tenant requesting the tenant to leave by a fixed time, specifying the grounds. Even if the tenant remedies the situation, the landlord may still proceed to evict the tenant.
  - If the tenant fails to leave, the landlord must follow the same proceedings above.
3. **NO REASON.** If the landlord wants to evict a tenant at the end of the lease period and follows the correct legal procedure, the landlord can do so without giving a reason. The landlord must give the tenant proper notice to leave.
  - Notice must be served on the tenant not less than the required number of days before the end of the lease period. Unless the lease provides for a longer period, the required number of days is as follows: (C.R.S. 13-40-107).
    - a. Lease period of one year or longer: 91 days.
    - b. Lease period of six months up to one year: 28 days.
    - c. Lease period of one month up to six months: 21 days.
    - d. Lease period of one week up to one month: 3 days.
    - e. Lease period of less than one week: 1 day.

The length of the lease period is determined from the language of the lease; if the lease does not specify the length of the lease, it will probably be determined by the frequency of rental payments. For example, if rent is due each

month, it is considered a month-to-month tenancy or lease. The law is unclear in situations where the original lease has expired. Some Courts apply the notice required by the expired lease while others base the notice period on a lease period determined from the rental payments.

If the tenant fails to leave, the landlord again, must follow the procedure set forth in Section 1, above.

### **RENT HIKES**

If a landlord wants to raise the rent, the tenant must be given as much advance notice as is required for eviction for no reason.

### **TENANT MOVING OUT**

A tenant has the right to peaceful enjoyment of the property, but this right can be modified by the terms of the lease. Unless the lease provides otherwise, generally the landlord has no right to enter the property without permission of the tenant except to demand payment of rent, to assert the landlord's lien, or to make emergency repairs. A tenant can sue a landlord for violating the tenant's rights, but this is difficult and should be done with the aid of an attorney.

### **MOVE-IN SHEET**

Before moving in, it is important for the landlord and tenant to examine the condition of the premises closely. All faulty conditions such as defects, cracks, chips, leaky faucets, dirty walls, carpets or tile – everything! – should be written down on duplicate copies and signed by both parties. Such precautions will save untold arguments pertaining to refunding the damage deposit.

### **CIVIL INFORMATION WEB SITE**

[www.courts.state.co.us](http://www.courts.state.co.us)

### **HELPFUL PHONE NUMBERS**

Clerk of the County Court	(970) 453-2272
County Health Department	(970) 668-4070
County Building Inspection	(970) 668-3170
Legal Aid (1-800-521-6968)	(970) 668-9612
Advocates for Victims of Assault	(970) 668-3906
This pamphlet contains general statements about the landlord-tenant law. Language in your lease, either oral or written, may affect how the law is applied in your situation. This pamphlet is provided by the Summit County Sheriff's Office, and is for information purposes only.	