

# Section II – Landlord /Tenant Rights Information



The following information has been compiled to help landlords and tenants avoid or resolve rental-housing disagreements and to minimize or prevent disputes and misunderstandings which may disrupt the smooth transaction of business between the landlord and tenant.

**This information is not, and cannot substitute for legal advice from attorneys or other qualified advisors about a specific problem that you as a landlord or a tenant may be encountering.** If you can't afford legal counsel and you qualify financially, Colorado Legal Services may be able to help. Their telephone number is (719) 471-0380.

## Application Process

Before renting to you, almost all landlords will ask you to fill out a written rental application form. A **rental application** is different from a **rental agreement**. A rental application will usually ask for the following information:

- Credit History
- Income and employment
- Rental History
- Have you ever been convicted of a felony?
- Are you a registered sex offender?

A rental application **CANNOT** ask you about your race, ethnicity, national origin, religion, sex, marital status, sexual orientation, familial status or handicap.

## Application Fees

When you give the manager or owner a completed application, they will charge you and anyone else named on your rental agreement a fee to cover the costs of obtaining a credit report and verifying the

information on your application which may include a background check. Before you pay the application fee, ask if the application fee will be refunded to you if he or she rents to someone else. **Ask for a written copy of the refund policy.**

## **Security Deposits**

Also ask the landlord if you must forfeit your deposit if you change your mind about renting the unit **after** they approve your application.

## **The Lease**

A lease is a written rental agreement that sets the foundation of the landlord-tenant relationship. The lease should protect the interests of both the landlord and the tenant. Leases can be set for any length of time, but generally run for six months to a year. If there is no specific length of time in the written lease agreement, the tenancy is considered to be a month-to-month tenancy. During the term of a lease, changes cannot be made to the lease unless both parties agree to do so. The tenant should not sign the lease if there is anything in it that the tenant does not understand. Do not sign the lease until all parties understand every statement in the lease. Every issue that might arise between the tenant or landlord should be written in the lease. Once the lease is signed, both parties are legally bound to it. To protect both the tenant and the landlord, make sure any agreements made that are not part of the original lease be put in writing no matter how much the two parties trust each other. If anything goes wrong in the future, most court judges will not even let “oral agreements” be presented in court. The lease should include items such as:

- The monthly rent amount
- The date rent is due, grace period (if any) and late payment fee
- Who pays which utilities
- The security deposit amount and refund policy
- Who is responsible for repairs within the unit

The lease may also contain provisions relating to subletting, yard maintenance, trash removal and pets.

## **The Security Deposit**

A security deposit, often called a “damage deposit,” is what the tenant pays to a landlord to cover damages (including cleaning) of a rental unit caused by the tenant or the tenant’s guests. By definition,

a security deposit is refundable if certain obligations are met. The obligations should be spelled out in the lease along with items that may be deducted from the deposit. The lease should also state who is holding the deposit. At the time of application, some landlords require a portion of or the entire security deposit. However, security deposits can be higher, up to 1.5 or 2 times the monthly rent, if you have no credit or poor credit. Ask the landlord if your deposit will be returned to you if your application is **not** accepted.

Tenants should review the lease carefully to see if it contains cleaning charges, carpet cleaning and re-renting charges. A landlord cannot keep the security deposit to cover normal wear and tear. The landlord can keep all or part of the security deposit to cover damage caused by the tenant's negligence, intentional abuse or for cleaning beyond normal wear and tear. Tenants are also responsible for damages caused by their guests.

**Note: A pet deposit is generally a separate deposit, which may or may not be refundable.**

Colorado law makes it illegal for the landlord to take any or part of a tenant's deposit without putting the damages caused by the tenant in writing and sending it to the tenant within 30 days (or up to 60 days if stated in the lease) of when the tenant leaves the property. The landlord must send the security deposit refund or notice of damages to the tenant's last known address. **Be sure to give the landlord your forwarding address when you move.** If the landlord does not return the security deposit or written list of amounts withdrawn from the security deposit within the 30 or 60 days (depending on the lease), the landlord loses all right to retain the security deposit. The tenant should send a demand letter by first class mail to the landlord requesting the return of the deposit within 7 days. If the landlord does not return the security deposit within 7 days, the tenant may sue in small claims court for three times the amount of the security deposit.

A Small Claims packet containing the forms, instructions and information is available, free of charge, in the Self Help Center located in the Courthouse at 270 S. Tejon Street, Room S101 or call (719) 452-5000.

## **Moving In**

Before you move into a rental unit, you should carefully inspect the condition of the unit with the landlord.

- Make a written list of all existing damage. Both landlord and tenant should sign the list.
- The tenant should take pictures of any existing damage at the time of move in and retain the pictures for their records. A set of dated prints with time and date could also be given to the landlord.
- The tenant may want to create a file in which they keep copies of the lease, move-in inspection report, monthly rental receipts, correspondence to and from the landlord and other information that pertains to the rental of the unit.

While not legally required, more and more landlords are requiring in their leases that all tenants purchase renter's insurance. The landlord's insurance **does not** cover your belongings.

## Rent Increases

There are no rent control regulations in the state of Colorado. Landlords can charge their tenants whatever the market will bear. Additionally, there are no limitations on the frequency of rent increases (except as noted below) or the amount of an increase if the landlord notifies the tenant within the proper time limits.

Things to know:

- Tenants who sign leases for a specific period of time cannot have their rent raised until the end of the lease period.
- Tenants without a written lease are considered to be living in a month-to-month tenancy. A notice to increase the rent must be given in writing to the tenant at least ten (10) days prior to the end of the current rent period.
- Notice of a rent increase to a tenant with a six-month lease must be provided to the tenant at least one (1) month prior to the expiration of the lease.
- Notice of a rent increase to a tenant with a one (1) year lease must be provided to the tenant at least three (3) months prior to the expiration of the lease.
- Landlords are not required to increase services or promise anything more in order to raise the rent.
- If the tenant is unable to negotiate with the landlord regarding the rent increase, he/she must move elsewhere when the current lease expires.

## **Late Fees**

Currently there is no limitation on late fees in Colorado, and excessive late fees have become a problem for tenants. It is a benefit to both the tenant and the landlord to have clearly defined limitations on late fees so that there can be no question as to the legality of the charges documented in the lease.

## **Utilities**

The cost of utilities for the rental unit can be paid by either landlord or tenant. The lease must state which party is responsible for paying which utilities. Usually, but not always, the tenant pays the gas and electric costs for their unit and the landlord pays the water, sewer and trash. However, if you are leasing a house you will probably be required to pay all utilities.

It's important for the tenant to know the following:

- A landlord can only charge the tenant in an apartment building or a house the actual amount of the cost of the utilities that the landlord is charged by the utility provider.
- Landlords are not required to install individual meters or other monitoring devices to determine the actual amount of utilities used by each unit as long as they arrive at an "appropriate" apportioning method documented in the lease.
- Landlords are not required to weatherize or insulate the unit to cut down on utility costs. Contact the Colorado Springs Utilities Customer Services.
- The tenant will have to contact the utility provider to have services turned on in their name when they are responsible for paying the utilities directly to the utility provider.
- Customers may contact the Utilities customer service unit to apply for budget billing. This plan allows the customer to pay the same dollar amount each month based on the yearly cost of utilities at that address. This amount is reviewed each year and may be adjusted annually.
- When a tenant moves and has been paying the cost of utilities for his/her unit to the utility provider, it is the responsibility of the tenant to notify the utility provider of the move out date so that a final meter reading can be done.

## Maintenance and Repair Questions

Your lease should set forth who is responsible for day-to-day maintenance and for making repairs. Basic lease agreements include the following:

- The tenant should submit repair requests in writing and keep a copy for his or her records. Phone in emergency repairs to the landlord, but also submit the request in writing.
- Minor items like burned out light bulbs and clogged drains are usually the tenant's responsibility. Also, the tenant is responsible for repairing or paying for the repair of anything the tenant or tenant's guest damages in the unit or property.
- Report dangerous and life threatening problems such as gas leaks to the Utility Company immediately.
- Make sure that smoke detector batteries are changed at least once every year. This may be done by the landlord or tenant.

What should the tenant do if the tenant believes that the residential unit does not meet minimum standards for structural safety, and the landlord has not repaired it, or refuses to repair it? If the building is within El Paso County (whether outside the Colorado Springs City limits or not), contact the Police Department Code Enforcement Office at 444-7891. They will flag the conditions and report them to the Regional Building Code Enforcement who will then assess the damaged condition and contact your landlord. The landlord will have 30 days to repair the structural problem. **If the tenant refuses to pay rent because the repairs have not been made, the landlord could begin eviction actions.** To avoid risking the landlord's eviction actions, the tenant should pay rent in full.

## The Warranty of Habitability

Colorado law requires that a rental property be fit for human habitation. If one of the following items is not maintained properly, the rental property is considered uninhabitable:

- Waterproofing and weather protection of roof and exterior walls maintained in good working order, including unbroken windows and doors;
- Plumbing or gas facilities that conformed to applicable law in effect at the time of installation and that are maintained in good working order;
- 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;

- Functioning heating facilities that conformed to applicable law at the time of installation and that are maintained in good working order;
- Electrical lighting, with wiring and electrical equipment that conformed to applicable law at the time of installation, maintained in good working order;
- 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;
- Appropriate extermination in response to the infestation of rodents or vermin throughout a residential premises;
- An adequate number of appropriate exterior receptacles for garbage and rubbish, in good repair;
- Floors, stairways, and railings maintained in good repair;
- Locks on all exterior doors and locks or security devices on windows designed to be opened that are maintained in good working order; or
- Compliance with all applicable building, housing, and health codes, which, if violated, would constitute a condition that is dangerous or hazardous to a tenant's life, health, or safety.

If the rental property is uninhabitable, the tenant can be released from the lease if the tenant sends a letter to the landlord giving him 5 days to repair the issue. The landlord has the option of moving the tenant to a comparable unit, at the landlord's expense, instead of repairing the issue. If the landlord does not repair the issue or move the tenant, the tenant may send another letter stating that the tenant will vacate the property sometime in the next 10 to 30 days due to the uninhabitable condition. The tenant must vacate the property on or before the date listed in the notice in order to be free from future liability for rent.

The tenant has the option of suing for an injunction for repairs of the property, as well. The tenant can recover any damages and attorney's fees if the tenant has to sue for an injunction.

The Warranty of Habitability also serves as a defense to an eviction for the non-payment of rent. If the landlord does not make the repairs, the tenant can withhold rent. **HOWEVER**, the tenant must pay the amount of the rent into the Court Registry on the answer date in

the eviction notice. In order for the Warranty of Habitability to be a defense to the eviction, the tenant must have the rent money available to deposit with the court.

### **Terminating a Lease for Domestic Violence**

A tenant who desires to terminate his or her lease due to domestic violence may do so by providing the landlord evidence of the domestic violence in either the form of a police report dated within the last 60 days or a valid protection order. Once notice is given, the tenant must pay their landlord the equivalent of one month's rent within 90 days of vacating the premises.

### **Landlord's Right to Enter and Tenant's Right to Privacy**

In Colorado, there is no state law governing when the landlord may enter the premises. There is no state law governing how much notice the landlord must give the tenant before entering the premises. The landlord's right of access depends entirely upon what the lease provides. Generally, in non-emergency situations--such as repair and maintenance--the landlord should give the tenant reasonable notice of his or her intent to enter the residence. Usually, a 24-hour notice is considered reasonable. In the lease--agreed to by both tenant and landlord--the notification time for permission to enter should be clearly stated. In the case of an emergency, a landlord is usually allowed immediate entry.

### **Lockouts**

A lockout is an action taken by the landlord to deny the tenant access to the rented premises.

Lockouts include such actions as changing the locks, installing a padlock, or turning off the utilities. In the state of Colorado, lockouts are **illegal**. By placing a lock on your door, the landlord has denied you access to your personal property. Without a court order, a landlord can not lockout a tenant for any reason. If the landlord is seeking to evict a tenant, he or she must follow the legal procedure for eviction. If the landlord attempts a lockout, he or she may be held responsible for interfering with the tenant's right to "peaceful possession."

Remember:

- If a tenant has been locked out, it is best not to re-enter the rental property.



- The tenant should contact an attorney, or legal services immediately.
- The tenant may also contact the Colorado Springs Police Department or the El Paso County Sheriff's Office and request that they notify the landlord that a court order is needed for a legal eviction.

## Evictions

If, a landlord may deem it necessary to evict a tenant from the residential unit, to do so, the landlord must follow specific legal procedures. It is never legal for a landlord to evict a tenant without a court order; and any lockout action on the landlord's part that prevents a tenant's access to personal property is illegal.

A landlord can give you a written 3-day notice if you have done any of the following:

- Failed to pay the rent;
- Violated any term of your rental agreement;
- Damaged the premises;
- Disturbed other residents;
- Used the premises for illegal purposes; and for
- Unauthorized pets or occupants

When the tenant is given a written 3-day notice, the landlord may begin a legal procedure for eviction, called **demand for payment or possession**. The landlord must first give the tenant **written notice** demanding that the tenant either correct the problem (pay the rent) or move out within three (3) days. The written notice does not have to be given to the tenant in person; it can be posted on the tenant's door or given to a member of the tenant's household age 15 or older who resides with the tenant. If the tenant fails to correct the problem or move, the landlord may, on the 4<sup>th</sup> day begin eviction procedures through the court. 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. If the tenant fails to answer or appear on the date indicated in the eviction papers, the landlord can obtain an eviction "Order" by default. The law in Colorado provides a 48 hour period before the Order can be served by the sheriff. The sheriff will serve the Order on the tenant and then will remain on site. The landlord can make arrangements to have the tenant and the tenant's personal property removed from the rental property. Neither the sheriff

nor the landlord has any responsibility to safeguard the tenant's property once it is removed.

There are resources in the community that offer financial and other assistance for persons that qualify which may **help a tenant avoid a court eviction**. These agencies and resources are listed in the back of this brochure.

The law states that the three (3) day period begins the day **after** the notice is given; an intervening Saturday, Sunday, or legal holiday does not count as one of the three (3) days, and the last day of the three (3) days cannot end on a Saturday, Sunday, or legal holiday.

### **Mobile Home Tenant Evictions**

If you are renting your mobile home from a landlord, the eviction process is the same as it is for someone renting an apartment or a house.

### **Mobile Home Owner Evictions**

In order to evict a mobile home owner from a mobile home park, the landlord must carry out specific procedures.

A mobile home park may evict a tenant for the following reasons, aside from the nonpayment of rent:

- Not obeying local and state laws and regulations concerning mobile homes
- Not obeying the written rules and regulations of the park
- The tenant's behavior annoys the other tenants or interferes with park management
- There is a change of use of the mobile home park or it is condemned. If zoning allows change of use without consent of the zoning authority, the landlord must give six months' written mailed notice to each tenant
- Making false or misleading statements in the application for tenancy
- Conduct of the home owner, a lease, or a guest which is the basis for a pending action to have the mobile home declared a public nuisance, or occurs on the park premises and (1) unreasonably endangers the life of the landlord or another mobile home owner or a guest, (2) constitutes willful, reckless, or malicious damage to the property of the landlord, another mobile home owner, or guest, or (3) amounts to a felony.

The landlord must give the tenant a written notice, signed by the landlord or manager. It must include the name of the landlord or mobile home park, the mailing address of the property, and the location or space number upon which the mobile home is located, and the county. If the eviction is for the nonpayment of lot rent, the notice must give the tenant 5 days notice to pay or move out. If the eviction is for another cause, the notice must be served upon the tenant at least 30 days before the end of the rental period or 60 days for a double-wide mobile home.

If the eviction is for failure to obey the written rules and regulations of the mobile home park, the mobile home owner must be given 30 days from the date of the notice to fix the violation. The home owner may not be evicted if the violation is fixed within 30 days. However, if the mobile home owner was given a right to fix a violation within the last 12 months, and did fix the violation, but then violates the same rule again, the homeowner does not have a second opportunity to fix the violation.

At no time may the landlord physically move the mobile home owner out or turn off electricity or water.

As with an eviction from a home or an apartment, the mobile home owner must be served with a Summons and Complaint from the court. The Summons and Complaint can be served on the mobile home owner by either handing it to the homeowner personally or by posting it in the front door and mailing a copy to the mobile home owner.

The mobile home owner may fight the eviction in court, and if the mobile home owner wins, he or she does not have to vacate the property. However, if the mobile home owner loses, a Writ of Restitution will be entered 48 hours after the judgment is entered. The mobile home owner will be served with a Notice of Judgment which will advise the homeowner to prepare the mobile home for removal by removing skirting, disconnecting utilities, attaching tires, and otherwise making the mobile home safe and ready for highway travel.

### **Protecting Tenants at Foreclosure**

The Protecting Tenants at Foreclosure Act is a Federal law that gives tenants rights when the property they rent is being foreclosed.

In order to qualify for protection, the tenant must be a *bona fide* tenant in a lease prior to the day foreclosure was initiated. It is not required for the lease to be written. A *bona fide* tenant is: (1) someone who

is not the owner of the property; and (2) someone who is not the spouse, child, or parent of the owner of the property, and (3) the rent paid is at or near market rate.

If the tenant meets the qualifications of a *bona fide* tenant and the new owner of the property is a bank, the tenant is entitled to remain in the property for the remainder of the lease or for 90 days, if the tenant is month-to-month. If the new owner of the property is a person who intends to live in the property, the new owner may terminate the lease with 90 days notice.

The tenant must pay their rent to the new owner of the property once a foreclosure occurs.

## **Moving Out**

The tenant can ensure the return of the security deposit by respecting the provisions of the lease or rental agreement while living in the unit. The tenant should complete a written inspection of the unit when moving out, using the move-in inspection and lease as a guide in cleaning the unit. The tenant should repair any damage they caused before vacating the unit and give the landlord proper notice of intent to move as required by the lease.

If a tenant decides to move out of the unit prior to the end of the lease period, the tenant should review the lease carefully. Generally, the landlord will assess fees and penalties when a tenant breaks the lease. Some landlords offer re-leasing services. The tenant should talk to the landlord first. If the landlord is willing to allow you to move early, the tenant should have the landlord put it in writing, sign and date the statement. If the tenant simply abandons the property, they will probably forfeit their security deposit and might be liable for rent and utilities through the end of the lease. The tenant could also be charged for the costs incurred by the landlord in finding a new tenant and to make the property ready for a new tenant.

Military tenants usually have a “**military escape clause**” in the event the tenant is posted out of the area. However, these clauses may not apply if the military tenant is accepted for base housing in the area. In this case, the tenant will need to negotiate the remainder of the lease with the landlord.

For more information on Tenant and Landlords rights, visit [www.hud.gov/local/co/renting/tenantrights](http://www.hud.gov/local/co/renting/tenantrights)

## Tips to Prevent or Minimize Problems

Most misunderstandings that occur between landlords and tenants could be avoided if each party verified certain information up front before entering into a rental agreement with the other party. Landlords should have a process in place to screen each applicant, verifying employment, credit history and rental references. Landlords should be serious about enforcing the lease. Tenants get a mixed message if a landlord upholds some parts of the lease but not others. Tenants should make sure they understand and can live with the property rules established by the landlord and spelled out in the lease. Tenants can avoid problems with their landlord, ensure the return of their security deposit and maintain good rental references by following the tips listed below:

- Get it in writing. This includes leases and inspection reports. Make sure the responsible party signs and dates it as well.
- Notify the landlord in writing of problems or complaints and keep copies.
- Request receipts for payment of rent, deposits, repairs, or any exchange of money.
- Pay your rent and utilities promptly.
- Keep the unit clean and orderly. Don't allow family, friends, or pets to damage the property. Remember that you are responsible for the actions of your guests while they are on the property.
- Get written permission from the landlord before making **any** alterations to the unit. This includes but is not limited to painting, removing cabinets, wallpapering or attaching any fixture to the walls.
- Cooperate with the landlord if you are moving. Be sure to give proper notice, as defined in the lease, clean the unit and return the keys to the landlord.
- Read everything you are asked to sign. Consult an attorney or one of the agencies listed in the booklet under legal services if necessary, prior to signing documents.