

LANDLORD/TENANT

THE LEASE

WHAT IS A LEASE?

A lease is a contract, or legally binding agreement, between the landlord and tenant, granting the tenant exclusive use of the landlord's property for a given period of time in exchange for rent.



WHAT'S IN A LEASE?

In a lease, a landlord and tenant agree to the terms, or rules, in effect during the time that the tenant uses the landlord's property. Such terms may include, for example, the amount of rent; the length of time the tenant can live in the landlord's property (the "term of possession"); the amount of the security deposit; property maintenance responsibilities of the tenant and/or landlord; and other rules that describe the rights and responsibilities of both the landlord and the tenant.

What are some common lease clauses and problem areas? It cannot be emphasized enough that both the landlord and the tenant should completely read and understand all clauses of a lease - and understand the rights and responsibilities created by those clauses - **before** signing the lease. A lease signed by both landlord and tenant is binding upon both landlord and tenant. The tenant does not have a "three-day right of rescission" after signing a lease.

Standard Lease Terms

(See page 49 of this *Handbook*, Appendix B, for a Model Lease endorsed by Boulder County).

The lease should include, at a minimum, the following terms:

- The amount of rent and when rent is due
- Grace periods and penalties, if any, for late payment of rent
- How long the lease is in effect (the "term of possession")
- Who is responsible for utility payments
- Who is responsible for minor and major repairs to the rental property, especially to appliances, plumbing, heating and cooling
- Circumstances under which the landlord may enter the unit – length of notice required to tenant, hours and days, whether the tenant must be present, emergencies, repairs, showing for sale or rental
- Who will be responsible for snow removal, garbage collection, lawn care, etc.
- Whether the tenant can sublet and/or assign the lease during the lease term
- An explanation of security deposit rules including, for example, how soon the security deposit will be returned at the end of the lease term and whether an initial and final walk-through with the tenant will be conducted by the landlord
- Any specific use prohibitions, such as keeping pets or smoking. Absent a specific restriction, a tenant may make use of a unit for any purpose not illegal or in violation of local ordinances and which doesn't create a nuisance or cause damage to the rental property.
- Other specific agreements between the landlord and tenant



Make sure that your lease clearly explains the rights and responsibilities of both the landlord and tenant.

Joint and Several Liability

Most leases create “joint and several liability” between co-tenants, meaning that when more than one tenant signs a lease, each tenant is individually responsible for all of the conditions and responsibilities of the lease. For example, a landlord can demand the entire rent amount from any one tenant if that tenant’s roommate moves out without paying rent.



Example: Tenants Troy and Todd enter into a lease with Leticia Landlord. Todd punches a hole in the wall and skips town without paying his share of the rent. Because their lease states that they are “jointly and severally liable”, Troy - as well as Todd - is responsible for paying to have the damage repaired, as well as for the entire amount of the rent owed to Leticia Landlord.

Attorney Fees

The prevailing party in an eviction or any other legal action brought under the Forcible Entry and Detainer Statute is entitled to recover damages, reasonable attorney fees and costs. **However, neither neither a landlord nor a tenant may recover attorney fees unless the lease contains a clause allowing for the award of reasonable attorney fees to either party.** (See C.R.S. §3- 40-123).

Privacy

While not required by statute, reasonable notice by the landlord for access to the rental property should be addressed in the lease. A commonly used privacy clause allows a landlord access to the rental property at reasonable times and with reasonable notice to the tenant to make necessary repairs or reasonable inspections. Additionally, a landlord has the right to enter a rental unit without notice in emergencies. (An example of an emergency might be an apartment flooding after the hot water heater breaks.) **If a lease does not include a written clause specifying when the landlord can enter a rental property, a tenant has exclusive use of the property** and does not have to allow the landlord access. However, if a tenant refuses to allow the landlord entry, the tenant assumes all liability for damages and repairs to the rental unit, as well as consequential damage to other units.



Tip for Landlords: Both a credit check and background check can be helpful when deciding on a prospective tenant. Be aware, however, that if you require one prospective tenant to provide the information necessary to perform a background and credit check, you must require the same information from all prospective tenants. Contact the resources below for more information on obtaining these records.

CREDIT CHECK:

TransUnion: 1-800-888-4213, www.transunion.com

Experian: 1-888-397-3742, www.experian.com

Equifax: 1-800-685-1111, www.equifax.com

CRIMINAL BACKGROUND CHECK:

Colorado Bureau of Investigation

www.cbirecordscheck.com

www.cocourts.com

Insurance

Neither the State of Colorado nor the City of Longmont require a landlord to compensate a tenant for damage to that tenant's personal property. If the lease does not contain a clause requiring the landlord to compensate the tenant for damage to a tenant's personal property, the tenant may wish to purchase renter's insurance. Renter's insurance is usually very affordable and may cover not only damage to personal property, but theft and other types of property loss, including to the rental unit.

Security Deposit

Also called a damage deposit, a security deposit is a tenant's advance payment of money to the landlord to secure against future lease violations by the tenant, including nonpayment of rent and property damage beyond ordinary wear and tear. The amount of the security deposit should be written into the lease. (See page 19 of this *Handbook* for more information about security deposits). (See C.R.S. §§38-12-101 thru 104).

Subleases and Assignments

A lease may allow, or may specifically prohibit, subleasing and/or assignments. Subleases and assignments can happen only with a landlord's permission, which should always be in writing for the protection of all parties. If a lease does not address subleasing and/or assignment, a landlord cannot unreasonably withhold consent.

Subleases

A sublease is a secondary lease between the original tenant and a new tenant. With a sublease, the original tenant remains responsible to the landlord if the secondary tenant defaults on rent payments, causes property damage or violates other lease provisions. The rental term of a sublease may be shorter than the original lease term. For example, a tenant with a lease term of one year, from January through December, might sublease an apartment for June through August while out of town, but then return to complete the lease term from September through December. Under Colorado case law, unless the lease prohibits subleasing, a landlord may not unreasonably withhold permission to sublet.



Sublease Example: Teresa Tenant and Larry Landlord enter into a lease for one year, but three months into the rental period Teresa needs to move because she gets a job in California. Teresa's friend Sarah Subleaser would like to rent the apartment. The lease permits subleasing and Larry agrees to allow Teresa and Sarah to enter into a sublease. Sarah doesn't pay any rent and Larry evicts her. Both Teresa and Sarah are legally responsible for the unpaid rent because Teresa's lease with Larry remains in effect, though she has a secondary lease with Sarah.

Assignments

An assignment is legal transfer to a third party of a tenant's right to possession of a rental property for a specific time frame. In an assignment, the third party assumes all responsibility for payment of rent to the landlord and the original tenant is released from further liability under the lease.



Assignment Example: Teresa Tenant and Larry Landlord enter into a lease for one year, but three months into the rental period Teresa needs to move because she gets a job in California. Teresa's friend Angie Assignee would like to rent the apartment. The lease permits assignment and Larry agrees to allow an assignment to Angie. Teresa assigns her lease to Angie, which then becomes a lease between Angie and Larry. Once the lease is assigned, Teresa is released from lease obligations (like rent) and benefits (like being able to live in the rental property). When Larry wants to collect unpaid rent, he can only demand payment from Angie, not Teresa.

UNENFORCEABLE CLAUSES

Leases sometimes contain clauses that are contrary to Colorado law and cannot be enforced in court. These clauses should be identified and eliminated before a lease is signed. If any party has a question concerning the enforceability of a lease term, seek legal advice. Some examples of unenforceable clauses are:

- Requiring a tenant to waive the right to the return of the security deposit
- Waiving a landlord's responsibility for acts of gross negligence
- Requiring a tenant who has been called into military service before the end of a lease term to pay for the remainder of rent due for their entire lease term. (See Federal Soldiers and Sailors Civil Relief Act (50 U.S.C. App. §534).
- Requiring a tenant to waive the covenant of quiet enjoyment of the premises
- Requiring a tenant to waive the warranty of habitability of the premises. (See C.R.S. §38-12-503).
- Allowing the landlord to forcibly remove a tenant and the tenant's personal property without going through the eviction process as required by Colorado law. (See C.R.S. §§13-40-101 thru 123).
- Tenant consent to eviction for non-payment of rent, or for any other reason, without a 3-day Notice as required by Colorado statute. (See C.R.S. §§13-40-01 thru 123).

TYPES OF LEASES

Term Lease

If a lease is for a specified period of time (*i.e.*, a year or two years) or has a definite ending date, it is a "term lease," also known as a "definite term" lease. Under a term lease, the landlord is obligated to rent a specified rental property to the tenant for the specified period of time and a specified amount of rent, and under all other terms of the lease. The tenant is obligated to pay the rent and fulfill all lease conditions during that specified period of time. When the lease expires the tenant must either renegotiate a new lease or stay on as a month-to-month rental, but only with the landlord's express consent. **Neither the landlord nor the tenant needs to give notice of termination at the end of a term lease unless the lease requires such notice.** (For information about termination of the lease by either party before the end of the term, *see* page 8 of this *Handbook*, Termination of the Lease).

Month-to-Month Lease

A month-to-month lease is a rental agreement for a one month period that is renewed automatically each month until properly terminated by either party. When a landlord and a tenant have not executed a written lease and rental payments are made monthly, a month-to-month lease is implied by law. A month-to-month tenancy is usually created when a tenant moves into a property and pays rent without signing a lease. It may also be created when an expired written lease is not renewed but the tenant remains in the property as a "holdover," with the landlord's consent. In such a case, if the written lease contains a clause stating that all lease provisions continue to apply after the written lease expires and the tenant stays on with a month-to-month lease, then the rights and responsibilities of each party, as defined by the expired written lease, remain in effect.

With any month-to-month lease, the landlord can raise the rent, change or terminate the agreement at the end of each month, with proper written notice to the tenant. The tenant, likewise, can terminate the lease at the end of the month with proper written notice to the landlord. **Proper notice for both landlord and tenant must be written and received by the other party at least ten days before the last day of the rental month.** (See C.R.S. § 13-40-107). However, a written month-to-month lease may specify a longer notice period, for example, 30 days or 60 days before the end of the lease term.

(For information about termination of the lease by either party before the end of the term, *see* page 11 of this *Handbook*, Termination of the Lease.)



Tips to Follow When Entering into a Lease

- **Read the lease carefully and understand all the terms before you sign it. Once the landlord and tenant have both signed the lease they are both bound by it. Many people mistakenly believe they have a three-day right of rescission. THERE IS NO RIGHT TO BACK OUT OF A LEASE, ONCE IT IS SIGNED BY BOTH PARTIES,**
- **Be sure all arrangements, agreements, responsibilities, and obligations are in writing and signed by both parties. Ideally, both landlord and tenant should sign and receive an original signed lease, with the pages numbered and each page initialed by the tenant (since a lease is usually prepared by the landlord). IT IS THE TENANT'S RESPONSIBILITY TO ASK FOR A DUPLICATE ORIGINAL OR A COPY OF THE LEASE.**
- **Be sure you do a landlord/tenant “walk through” of the rental property and complete and sign a Move-in/Move-out Checklist (*see* page 56 of this *Handbook*, Appendix ‘C’) at move-in, to note the condition of the rental. It is good practice for both landlords and tenants to take date-stamped photographs or a date-stamped video of the property at the beginning of a rental period to record the property’s condition. Documentation by both the landlord and the tenant can help avoid misunderstandings about return of the security deposit at the end of the rental term.**

Verbal Leases and Agreements

An entire lease - or additions or changes to a written lease - can be created by verbal agreement between a landlord and tenant. Verbal agreements are legally enforceable, if they can be proved. The problem is that when a dispute or misunderstanding arises over the terms of a verbal lease, the disagreement itself makes it almost impossible to know what the parties originally thought they were shaking hands on. The best course of action is to always put a lease in writing, including all changes or additions to the lease, and make sure both parties sign and date the document.



Example: Tomás Tenant and Linda Landlord enter into a lease that does not allow Tomás to have pets in his apartment. Tomás asks Linda if he can have a cat and Linda agrees. Tomás gets a cat. After 2 months, Linda and Tomás have a disagreement about parking spaces and Linda is so mad at Tomás she decides to evict him. Linda brings an eviction action against Tomás, claiming he is breaking the lease by keeping a cat in his apartment, something specifically not allowed according to the lease terms. In court, Tomás explains that Linda gave him permission to keep a cat. Linda lies and tells the court she made no such agreement. Tomás can’t prove the verbal agreement so the court enforces the written terms of the lease and Tomás is evicted.

CAN LEASE PROVISIONS BE CHANGED AT ANY TIME?

The lease term, or any other lease provision, can be changed ONLY if both landlord and tenant agree on the change. To avoid squabbles or more serious disagreements, put all changes in writing, signed and dated by both the landlord and tenant. Absent a subsequent agreement to the contrary between the landlord and tenant, all lease provisions remain binding on both landlord and tenant through the entire specified lease term.

WHAT HAPPENS TO THE LEASE IF A RENTAL PROPERTY IS SOLD?

A landlord cannot terminate a lease early simply because the landlord wishes to sell the property, unless the lease expressly gives the landlord such a right. If a rental property is sold, the new owner/landlord must honor a rental contract existing at the time of the sale. All lease terms, including the termination date and the amount of rent, must be honored by the new owner/landlord unless the new owner/landlord and the tenant agree to make changes. The tenant should always continue to pay rent to the original landlord/owner until the tenant receives a written notice, signed by the original owner/landlord, directing the tenant to send the rent to someone else.

When a property is sold prior to the end of a lease term, the original owner/landlord has two alternatives regarding the tenant's security deposit:

- 1) **Transfer the security deposit to the new owner/landlord and notify the tenant by mail that this transfer has been made, or**
- 2) **Return the security deposit to the tenant per the terms of the lease, less any legitimate deductions.**

WHAT HAPPENS TO THE LEASE IF A RENTAL PROPERTY IS FORECLOSED?

Generally, when a house is sold through foreclosure, all tenants with a written lease, including those subsidized through a government program (*i.e.*, Section 8 tenants), must be allowed to remain in the unit through the term of their lease, UNLESS the new owner intends to live in the rental unit. If the new owner intends to live in the unit, or if there is no written lease, a tenant must be given a 90-day written notice to vacate, UNLESS

- 1) the tenant has an ownership interest in the rental property being foreclosed;
- 2) the tenant is a member of the foreclosed owner's family; or
- 3) the tenant is not subsidized through a government program and is paying substantially less than fair market rental.

(See S.896 Title VII, *Protecting Tenants at Foreclosure Act*).

Tenants should continue to pay rent to their original landlord until and unless they receive written documentation that rent is to be paid to a new owner.

DISCRIMINATION PROTECTION

Under local, state and federal law, discrimination is prohibited on the basis of race, color, creed, religion, national origin, ancestry, sex, disability/handicap*, familial status or marital status. Specifically, the Federal Fair Housing Act makes it unlawful for a landlord to discriminate by refusing to rent based on those characteristics or by negotiating terms, conditions or privileges different from other tenants based on those characteristics. (See 42 U.S.C. §3604(b)).

An exception to anti-discrimination prohibitions is allowed when renting a room in a single-family owner-occupied home. In addition, religious organizations may give preference to individuals of their same religion and a private club may give preference to its own members under particular circumstances. Certain properties or developments may also refuse families with children if those properties meet specific federal and state standards qualifying them as "Housing For Older Persons."



Examples of Illegal Advertisements

Apartment for Rent!

1 bedroom. Quiet, homogeneous, all-American neighborhood. Married couples and empty nesters preferred.

Home for Rent!

2 story, 2 bedroom home. Centrally located close to parks and stores. Not well suited for elderly or disabled.



Legal Advertisements

Apartment for Rent!

1 bedroom on a quiet block.

Home for Rent!

2 story, 2 bedroom home. Centrally located near local parks and stores.

* Federal law uses the word "handicap" and Colorado law uses the word "disability." They have the same meaning for purposes of the Fair Housing Acts.

Both the Federal and Colorado Fair Housing Acts have special provisions applying to people with disabilities. Discrimination against persons with disabilities/handicaps is defined in the Acts as

1. Refusing to allow a person with a disability to make a modification to a building or premises, at that person's own expense, if that modification is necessary to give the person with a disability "full enjoyment of the premises;" or
2. Refusing to make "reasonable accommodations" in "rules, policies, practices or services" to give the person with a disability "equal opportunity to use and enjoy a dwelling."

The Federal Act also prohibits the design or construction of new multifamily buildings after March 13, 1991 which don't have required accessibility features, as enumerated in the Act.

Examples of discrimination could include:

1. Denying an interested prospective tenant the opportunity to see, rent or buy an apartment or home, yet making it available to other prospective tenants
2. Denying disabled or minority tenants privileges offered to other tenants, such as parking spaces, needed repairs and services, or the use of the apartment pool, dining room or club house
3. Advertising discriminatory preferences
4. Harassing or threatening someone on the basis of their protected class
5. Not allowing a person using a wheelchair to build a ramp
6. Not allowing a guide dog in a "no pets" building
7. Not allowing a reserved parking space for a person with a disability because the housing doesn't give reserved spaces.

For more information, or if you believe that you have been or are being discriminated against, contact Longmont's office of Community and Neighborhood Resources at 303-651-8444 or contact the Colorado Civil Rights Commission at 303-894-2997 or www.dora.state.co.us/civil-rights.htm.



THE RENTAL PERIOD OR "TENANCY"

The tenancy is the time agreed to in the lease during which the tenant has the right to live in and use the landlord's property. The tenancy is governed by the terms of the lease and applicable Colorado law and municipal ordinances that create legal rights and responsibilities for both the landlord and the tenant.

LANDLORD RIGHTS AND RESPONSIBILITIES

Responsibility to Repair and Maintain the Rental

Under Colorado law, a landlord has a responsibility to repair the rental property during the lease term under the following circumstances:

- The lease contains a specific agreement that specifies that the landlord is responsible for repairing or maintaining the rental
- A residential rental is uninhabitable or unfit for the uses reasonably intended by the parties. (See C.R.S. §§38-12-501 thru 511).
- A residential rental is in a condition materially dangerous or hazardous to the tenant's life, health or safety. (See C.R.S. §§38-12-501 thru 511).
- There is a specific agreement between the landlord and the tenant that the landlord will make specified repairs
- There is a hazardous condition caused by gas-burning equipment. (See C.R.S. §38-12-104).
- The repairs are needed in common areas of multi-unit properties, like parking lots, sidewalks, stairways and hallways, to keep them safe. A landlord must exercise reasonable care to protect against known dangers. (See C.R.S. §13-21-115).
- The repair or maintenance is required in order to conform to the City of Longmont *Property Maintenance Code*. (See following section of this *Handbook*).



Example: Luís Landlord knows that a slippery ice patch forms outside the entrance of his apartment complex, becoming dangerous for tenants entering and leaving the building. He has a duty to make sure the area is clear of ice and he may be liable if a tenant slips on the ice and is injured.

Compliance with Longmont *Property Maintenance Code* and Zoning Ordinances

All rental property within the City of Longmont must be in compliance with the City of Longmont *Property Maintenance Code*, which incorporates by reference the *International Property Maintenance Code* and establishes minimum health, safety, and maintenance standards (see *Longmont Municipal Code*, Title 16, Chapter 16.20). The City of Longmont does not license rental property (in contrast, some cities, including Boulder, do have rental license requirements). The City, however, does have a Rental Inspection Program and will inspect properties when it receives complaints. Minimum standards necessary for decent, sanitary, and safe housing include the following (see page 27 of this *Handbook* for more information):

- At least one electrical convenience outlet and one electric light fixture or 2 electrical outlets in each livable room
- Heating facilities capable of maintaining 65°F at a point 3 feet above the floor
- An emergency escape and rescue window in each sleeping room below the fourth floor, with a minimum window opening of 5.7 square feet and a maximum window sill height of 44 inches for new construction, and as required by the UCBC for existing buildings. Note: In order to achieve the required 5.7 square feet, dimensions must exceed 24 inches minimum height and 20 inches minimum width.
- An adequate supply of hot water, with all fixtures served by hot water properly connected
- A working smoke detector
- All plumbing fixtures maintained in proper operating condition and connected to a sanitary sewer
- Windows for natural light and ventilation in all habitable rooms. The window square foot size must be a minimum of 8% of the room square foot size.

Zoning Ordinances

In addition to the minimum habitability standards of the Longmont *Property Maintenance Code*, the City's zoning ordinances contained in the *Land Development Code* contain provisions affecting landlords and tenants. (See *Longmont Municipal Code*, Title 15, Chapter 15.03). Specifically:

- Apartment units must be located within permissible zoning districts
- The proper indicated amount of street parking must be provided for each unit, unless the building is legally permitted to deviate from that requirement



Example: Tenants Tad and Tammy, their 5 children, Tammy's mother, and Tad's brother all live in one rental property. This is permitted because they are "family" as defined by the Longmont Municipal Code. Note: they all need to either be included in the lease or have the landlord's permission, preferably in writing.

Occupancy Limits

In Longmont, the number of people permitted to live in a single rental unit (house or apartment) is determined by the Longmont Municipal Code's definition of "family." Only one family is allowed to live in a single rental unit. "Family" is defined as:

- Two or more persons related by blood, marriage, adoption or legal guardianship, including foster children; **or**
- Two unrelated persons and their minor children living together in a dwelling unit; **or**
- A group of not more than five persons not related by blood, marriage, adoption or legal guardianship (including foster children) living together.

The above lists do not include all the minimum health, safety and maintenance standards and zoning ordinances for rentals. They are offered here as examples and as a general guide for landlords and tenants. For more information, see *Longmont Municipal Code*, Titles 15 and 16, or contact the City of Longmont Code Enforcement through the Office of Community and Neighborhood Resources (303-651-8444). The *Longmont Municipal Code* is available online at <http://ci.longmont.co.us>. If a rental is outside of Longmont, you will need to contact the city or county in which the rental is located, as each jurisdiction determines its own minimum standards.

TENANT RIGHTS AND RESPONSIBILITIES

Pay Rent and Utility Bills on Time

A tenant has a responsibility to pay the rent and other bills, as agreed to in the lease, on time. Late rent payment, even if late by only a day, is grounds for eviction. Keep a record and always get receipts from the landlord for any money paid, whether for rent, deposits, repairs, or for anything else. Never pay in cash when you can pay with a personal check or money order. If you must pay in cash, always get a receipt.

If you find that you will not be able to pay your rent or utility bills on time, immediately contact the landlord and/or the utility company and explain your situation. Communicate and try to work out a payment arrangement acceptable to everyone. However, never agree to a financial commitment if you know you will have a problem meeting the obligation. Once you agree to a payment arrangement, keep your word. Problems become compounded when a tenant does not communicate promptly with the landlord or utility company, allowing the rent or utility bills to accrue late payment penalties and interest and perhaps making it impossible for the tenant to catch up financially.

Comply with Terms of Lease

In signing the lease, you entered into a binding contract. If you do not comply with its terms you may be evicted. If you do have an unforeseen change in circumstances, discuss a possible lease modification rather than violate the lease and risk an angry landlord or eviction.



Example: Ted Tenant enters into a lease that specifies that guests are not allowed to stay for more than 21 days without written consent of the landlord. Ted's brother, Hugo, moves to town and they agree that Hugo will live with Ted. Ted asks Lynn Landlord for permission to have Hugo live in his apartment. Landlord agrees and they write the agreement, sign and date it, and attach it to the original lease.

Repairs and Maintenance

When repairs and/or maintenance are needed, the tenant should double check the lease to confirm whether it is the landlord or the tenant who is responsible for making those repairs or performing that maintenance.

If the lease does not address responsibility for repairs and maintenance, and the type of repairs or maintenance needed fall outside those duties required of the landlord by law (*see page 7 of this Handbook: Landlord Rights and Responsibilities*), it is presumed that is the repairs and maintenance are the responsibility of the tenant.

If, under the lease, a binding agreement, or some other legal duty, the landlord is responsible for repairs and maintenance, and a repair needs to be made, the tenant should first contact the landlord. If the landlord does not act promptly, the tenant should:

1. Present a written list of the needed repairs to the landlord, requesting that they be made by a certain date;
2. Offer to help accommodate the landlord's schedule by arranging to be home when the repair person arrives;
3. Keep a copy of any notes, letters or emails to or from the landlord;
4. Follow up verbal agreements with the landlord with a letter or email confirming the agreement;
5. Allow the landlord a reasonable amount of time to make the repairs; and
6. Send the landlord a written reminder if the repairs are not made in a reasonable amount of time.

Obligation of the Landlord to Maintain Habitable Premises

C.R.S. §§38-12-501 thru 511

Under a Colorado law applying to all residential agreements entered into or renewed as of September 1, 2008, a landlord, by virtue of renting a property, warrants that the premises are fit for human habitation and for the uses reasonably intended by the parties. A tenant may withhold rent from a landlord if, and **only if, three conditions are met:**

1. The tenant finds that the rental unit is unfit for the uses reasonably intended by the landlord and tenant, **and**
2. The rental unit contains a condition that is materially dangerous or hazardous to the tenant's life, health or safety, **and**
3. The landlord has received written notice of the condition and has failed to correct it

A habitable rental unit must meet the following standards:

1. Waterproofing of roof
2. Unbroken windows and doors
3. Plumbing and gas fixtures in good working order
4. Running water and reasonable amounts of hot water at all times, connected to appropriate fixtures
5. Heating fixtures in good working order
6. Electric lighting in good working order
7. Common areas kept reasonably clean and free from infestations of vermin
8. Appropriate extermination in response to an infestation of vermin in a residential unit
9. An adequate number of garbage disposal containers in good repair
10. Floors, stairways and railings maintained in good repair
11. Locks on exterior doors and locks or security devices on windows designed to be opened, maintained in good repair

If a landlord fails to maintain a habitable premises after proper notice from the tenant or from a code enforcement agency, a tenant may make those repairs in a workmanlike manner, submit a bill for those repairs to the landlord and deduct the cost of the repairs from the tenant's rent payments, up to \$400 in any one month or \$1,000 in any 12-month period.

NOTE: C.R.S. §§38-12-501 thru 511 contain exceptions and requirements for withholding of rent and describe a specific process a tenant must follow. You cannot simply withhold rent, but must strictly follow statutory procedures. If, as a tenant, you are thinking of seeking remedy under the requirements of this statute, you can call Longmont's Community and Neighborhood Resources (303-651-8444) to discuss your situation or seek advice from an attorney.

TERMINATION OF THE LEASE

HOW IS A LEASE TERMINATED?

A tenant may voluntarily terminate (end) a lease by giving the landlord proper notice, as required by the lease or by law. When leaving a rental before the end of a lease term, the tenant may be held responsible for rent through the entire term of the lease (*see* page 12 of this *Handbook*, Early Move-out). A landlord can only remove a tenant prior to the end of a lease term through an eviction, meaning that the landlord **must** go through formal legal eviction proceedings in court (*see* page 13 of this *Handbook*, Involuntary Termination (Eviction)). A lease may also be terminated if a landlord and tenant enter into a written agreement (signed and dated by both parties) to end the lease early.



VOLUNTARY TERMINATION

Termination of Term Lease

A term lease, or definite term lease, has a definite date of termination. The lease expires at the end of the term of the lease and the tenant must leave the rental on that date. Neither the landlord nor the tenant need to give notice of termination, unless the lease requires such notice. A common practice is to include a clause in a written lease requiring 30 days notice before the date of termination if the tenant intends to vacate the premises, and if no notice is given, the lease automatically becomes a month-to-month lease.

Termination of Month-to-Month Lease

A month-to-month lease is a rental agreement for a one-month period that is renewed automatically each month until properly terminated by either party. Proper notice to terminate a month-to-month lease is done by providing written notice of the intent to terminate the lease at least ten days before the last day of the rental month. This ten day notification period may be changed to a longer time if the parties have a written lease – a 30 day notice is a common modification.



DOMESTIC ABUSE: Under Colorado law, a victim of domestic abuse can terminate a lease without penalty by providing the landlord with evidence of the domestic abuse (physical assault or verbal abuse or harassment) or the threat of domestic abuse, in the form of a police report or a protection order issued by a court. Victims may vacate the premises and can only be held responsible for one month's rent following the month of their departure, due to the landlord within 90 days after the victim leaves the premises. This statute also prohibits the landlord from terminating a rental agreement or imposing penalties on domestic abuse victims who call the police. As defined by the statute, the relationship between the perpetrator and the victim need not be intimate; a roommate can be the victim of domestic abuse by a fellow roommate. (See C.R.S. §38-12-402.)

Early Move-Out

When tenants move out before the end of their lease term, they remain responsible for rent until the property is re-rented or until the lease has expired, unless they have another agreement with the landlord. However, a landlord cannot just sit by and collect rent but must make a reasonable effort to re-rent the property. The tenant may also be responsible for the landlord's reasonable costs of re-renting, such as advertising, and many leases include a clause to that effect. If the landlord has to accept a lower rental amount in order to occupy the property, the tenant may be responsible for the difference between the old and new rent. A lease contract may also specify that the tenant, rather than the landlord, is responsible for finding a new tenant.

Under Colorado law, a residential rental unit must be fit for human habitation. If landlords fail to make timely repairs as necessary to maintain habitability, a tenant may seek to be released from a lease without further obligation. For those conditions which define habitability, see page 10 of this *Handbook*. The law establishes a specific procedure in order to be released from a lease. If you are considering such an action, you can talk with someone in the office of Community and Neighborhood Resources about your situation (303-651-8444) or seek legal advice. (See C.R.S. §§38-12-501 thru 511).

When a tenant experiences situations involving, for example, sexual harassment, unreasonable noise made by nearby tenants (only if they are renting from the same landlord), or the landlord is entering the rental premises without proper notice to the tenant, the tenant may have grounds for a constructive eviction. The tenant must provide the landlord with a written complaint describing the particular problem and include a written notification of the tenant's intention to move if the issue is not resolved. Solid documentation is important should the landlord attempt to collect unpaid rent at a later date. A tenant considering a constructive eviction claim against a landlord cannot continue to live in the rental unit. The advice of an attorney should be sought in constructive eviction situations, as these are complicated matters under Colorado law.



If you are considering moving from the rental before the expiration of your lease term, you should review your lease for authorization to sublet and/or assign your lease, or a clause allowing you to vacate because of business relocation. Under the *Federal Soldiers and Sailors Civil Relief Act* (50 U.S.C. App. §534), individuals serving our country in the military can terminate a rental lease without penalty if they are required to relocate or are called into active service.

INVOLUNTARY TERMINATION (EVICTION).

The **only** way a landlord can terminate a lease and evict a tenant from any type of rental property is by going through a Forced Entry and Detainer (FED) legal action to obtain a court order requiring the tenant to vacate the property. It is never legal for a landlord to evict a tenant without a court order. Self-help by a landlord is illegal in Colorado. Evictions are governed by Colorado law under C.R.S. §13-40-101 *et seq.*

Reasons for Eviction

A landlord may initiate an eviction action to evict the tenant for the following reasons:

- Tenant has failed to pay rent, **or**
- Tenant has violated a term of the lease, **or**
- Tenant has committed a substantial violation while in possession of the rental premises, which may include, for example, a violent or drug-related felony on or near the rental property or an act on or near the rental property which substantially endangers a person or the landlord's property (*see* C.R.S. §13-40-107.5), **or**
- Tenant refuses to leave the rental after the end of the lease, which includes a month-to-month tenant staying on after the landlord has given required notice that the lease will not be renewed at the end of the month.

Illegal Evictions

A landlord may not use any form of self-help eviction, including locking a tenant out of a rental property ("lock-out"). Any lease clause giving a landlord the right to bodily evict a tenant or the tenant's possessions, or to change the locks on a rental, is unenforceable as contrary to Colorado law. However, if a tenant is locked out, the tenant may not use force to reenter the rental. If a landlord will not negotiate reentry and/or removal of possessions, the tenant should seek legal advice before attempting to re-enter the property. Physical contact or intimidation on the part of either the landlord or tenant should be reported to the police. If the landlord will negotiate reentry or removal of possessions, the tenant or landlord may want to order a police civil standby to ensure no confrontation occurs. A landlord who does lock a tenant out takes the risk that a tenant may file a lawsuit against the landlord for damages. Also, if a tenant is current with rent payments but is locked out of the rental unit, a tenant may regain possession of the rental premises by obtaining a court order through the eviction process, just as a landlord can use the eviction process to gain repossession. (*See* "Lockouts" in the Longmont Police Department Standard Operating Procedures, page 66 of this *Handbook* and page 11 of this *Handbook*, Termination of a Lease).

The Eviction Process, Residential and Commercial Leases

1. Tenant Violates Lease

See above, Reasons for Eviction.



TIP FOR LANDLORDS:

If your tenant has not paid rent or is violating a term of the lease, you should first communicate with the tenant, explain the lease violation and discuss a way to get the rent paid or the lease violation cured, before giving the tenant a 3-day Notice. If you need assistance communicating or mediating with your tenant, call Community and Neighborhood Resources at 303-651-8444 and/or legal counsel.

2. “Demand for Compliance or Right to Possession” or “3-day Notice”

Before filing an eviction action in court, the landlord must give the tenant notice of the landlord’s intention to evict the tenant by serving the tenant with a “Demand for Compliance or Right to Possession” notice, also known as a “3-day Notice”. The 3-day Notice states that the tenant must “cure” or fix the lease violation or vacate the property within three days (not including the date of posting. Weekend days and holidays are included. However, if the third day falls on a Sunday, it is a good idea to give the tenant through the next day to pay the rent or cure the violation.) The 3-day Notice must be written but does not have to be a formal document. (See page 63, Appendix D of this *Handbook* for an example of a 3-day Notice.)



TIP FOR TENANTS:

If you receive a 3-day Notice from your landlord, you should immediately contact the landlord, the Longmont office of Community and Neighborhood Resources and/or legal counsel to attempt to resolve the issues. Often, you will be able to clear up a misunderstanding or work out a payment plan to avoid eviction.

The three day notice must include the following:

1. The address of the rental property
2. Name(s) of the tenant(s)
3. Date the 3-day Notice is served on the tenant.
4. Explanation of why the landlord is evicting the tenant (“the grounds”). Grounds for eviction can include, for example, nonpayment of rent or violation of a lease term. Be which lease terms are being violated.
5. Amount of rent owed by the tenant, if eviction is for nonpayment of rent
6. A demand giving the tenant three days to “cure” the lease violation by either paying the past due rent, curing (i.e., fixing) the lease violation or moving out (**Note:** a second 3-day Notice for a violation of the same lease provision (called a Notice to Quit for Repeat Violation) does not need to give the tenant a right to cure the violation. For this reason, it is important to be specific regarding which terms the tenant is violating. When posting a Notice to Quit for Repeat Violation, it is a good idea to reference the first 3-day Notice.)
7. The landlord’s signature

Serving the 3-day Notice may be done through either:

1. Personal service (leaving the notice with a resident of the rental household over 18 years old), **or**
2. Posting in a conspicuous place where the tenant will have to see it, for example, tacked onto the front door.

As soon as possible after serving the 3-day Notice, the landlord should also mail a copy to the tenant at the tenant's mailing address, preferably by certified or registered mail. Before the landlord can initiate an eviction in court, the 3-day Notice must be posted for three days, not including the day of posting. Saturdays, Sundays and legal holidays do count for the three days, though if the third day falls on a Sunday, it is best to give the tenant through Monday to pay the rent or fix the violation.

3. If the Tenant Pays the Rent or Fixes the Lease Violation in the 3-day Period, the landlord must accept the money or cure and cannot evict the tenant. Of course, some lease violations cannot be cured, such as the commission of a substantial violation as defined in C.R.S. § 13-40-107.5 (see page 13 of this *Handbook*, Reasons for Eviction) or as defined in the lease. If the tenant fails to pay or does not surrender possession of the rental by the end of the three days, the tenant may then be evicted. NOTE: Even if a tenant moves out within the three days allowed by the demand, the tenant is still contractually responsible for past due rent and for rent through the lease term and the landlord may still follow through with the eviction procedure and receive a judgment for any amount owed to the landlord.



Example: Tracy Tenant has not paid rent for two months. Louie Landlord posts a 3-day Notice on Tracy's door on Monday and mails a copy of it to her mailing address on Tuesday. The 3-day Notice states that Tracy owes \$1,200.00 in rent to Louie. On Wednesday, within the 3-day period, Tracy is able to get the \$1,200.00 together and pays it to Louie. The lease violation-nonpayment of rent-is cured and Louie cannot evict Tracy at this time.

4. Eviction or Forced Entry and Detainer ("FED") Action in Court.

If the tenant does not pay the rent, cure the lease violation, or move out within three days after posting of the 3-day Notice, the landlord may initiate an eviction, or Forced Entry and Detainer ("FED") action, in county court. The landlord does not need to be represented by an attorney in order to initiate an eviction.

What follows is a general overview of the eviction process. A landlord seeking an eviction must properly follow all rules and procedures required by statute. If the rules and procedures are not precisely followed, the Court cannot enter the landlord's request for an order for restitution of the rental property or for a judgment for monies due until the process has been completed properly.



The required forms and other helpful information may be found at the Boulder County Courthouses: Longmont Annex, 1035 Kimbark Street, Longmont, 80501, 720-564-2522; or Boulder County Justice Center, 1777 6th Street, Boulder, 80306, 303-441-3750. They are also on the Colorado Judicial Branch website, Self Help Center (<http://www.courts.state.co.us/chs/court/forms/selfhelpcenter.htm>).

1. **Complete a “Complaint in Forcible Entry and Detainer” and “Summons” at the Courthouse**

The landlord will need to include a copy of the lease and a copy of the 3-day Notice served on the tenant. The landlord is the “Plaintiff” and the tenant is the “Defendant”.

2. **File the “Complaint in Forcible Entry and Detainer” and “Summons” and Pay the Filing Fee at the Courthouse**

As of January 2010, the filing fee is \$87.00 (check with the Court Clerk for the current filing fee, as it is subject to change without notice). When filing the Complaint and Summons, the Court Clerk will set the case for a “return date”, which is the date that the landlord and tenant must return to court either for a hearing on the eviction or to request a jury trial. The Clerk will complete the Summons by filling in the time, date and location of the return date. The court date will be between five business days and 10 calendar days from the filing date. (See C.R.S. §13-40-111).

3. **Serve the Tenant With the Complaint and Summons**

The tenant may be served by either

- 1) personal service, **or**
- 2) by posting and mailing.

Personal service may be done by either

- 1) Boulder County Sheriff’s Office (1777 6th Street, Boulder 80302, 303.444.3740), currently \$48.68 to serve in Longmont, **or**
- 2) a private process server, **or**
- 3) someone over the age of 18 who is not involved in the case.

Make sure that the Return of Service portion of the Summons is completed by the individual doing the service. Each tenant (referred to as the “defendant” in the Court eviction action), must be served at least five business days (which do not include the date of service or Saturdays, Sundays or legal holidays) prior to the court hearing

Service by posting and mailing is done by posting the Complaint and Summons in a conspicuous place on the rental premises at least five business days (which do not include the date of service or Saturdays, Sundays or legal holidays) prior to the court hearing and then mailing a copy of the Complaint and Summons to the tenant no later than the next day. Be sure that the Return of Service portion of the Summons is completed.

If the tenant is served by posting and mailing, the landlord may only ask the court for a Writ of Restitution, returning control of the rental property to the landlord. In this situation, if the tenant owes the landlord back rent, damages, late fees, or other amounts, the landlord must file a separate law suit against the tenant in Small Claims Court or County Court to receive an enforceable Judgment against the tenant. As of January 2010,

for claims under \$500, the Small Claims Court filing fee is \$31.00, for claims over \$500, the filing fee is \$55.00 00 (check with the Court Clerk for the current filing fees, as they are subject to change without notice)..

If the tenant is served by personal service, the landlord may ask the court both for a Writ of Restitution and for a Judgment for the amount of any back rent, damages, late fees, court costs or other amounts due from the tenant.

NOTE: Any claim on the part of the tenant that service and notice by the landlord was insufficient is waived by the tenant's appearance in court on the date of the hearing.

NOTE: The prevailing party-either landlord or tenant - can recover reasonable attorney fees, court costs and costs of service. However, a residential landlord or tenant who prevails in court may not recover reasonable attorney fees unless the lease itself contains a clause providing for either party to obtain attorney fees. See C.R.S. §13-40-123

4. Complete and File an Answer at the Courthouse.

The tenant has the right to file an "Answer" to the landlord's Complaint, before or on the return date. As of January 2010, the filing fee for an Answer is \$82.00 (check with the Court Clerk for the current filing fee, as it is subject to change without notice). The tenant may also file a Counterclaim for any damages claimed from the landlord, for a filing fee of \$86.00. A trial on an FED is a trial to the judge, however, either party may request a jury trial by paying a \$98.00 jury demand fee, payable by the Plaintiff at the time of filing the Complaint or by the Defendant at the time of filing the Answer.

5. Appear in Court on the Return Date

Both the landlord and the tenant should appear in Court. If the tenant does not appear and the landlord can prove to the Court that the lease has been violated, the Court will most likely enter the eviction order even though the tenant is not present. REMEMBER: the only person who can tell you that you should not appear in court is the judge. Never rely on the assurances of the other party that your rights will be protected if you don't appear.

6. Be Prepared

Both the landlord and tenant should go to Court on the return date prepared to argue their case or to negotiate. All paperwork (for example, Complaint, Summons, 3-day Notice, Return of Service, Answer, lease, and any records of payment or documents supporting the landlord's reason(s) for eviction or the tenant's defense(s)) should be brought to court. Both the landlord and tenant should be ready to explain to the Court in a brief, concise way why the eviction should (landlord) or should not (tenant) be ordered.

7. To Negotiate Payment or a Move-out Date, Ask the Court for a Mediator

Mediators are almost always present for FED hearings, in both the Boulder County Court in Boulder and in the County Court Annex in Longmont. A mediator can help the landlord and tenant make an agreement on a payment plan or move-out date. An agreement made with the help of a mediator can be made an Order of the Court.

The following may occur in Court:

- The Court enters a "Possession Judgment," also known as a "Writ of Restitution," which is the eviction Order directing the tenant to move from the rental within 48 hours of the entry of

the Judgment. If the tenant is not out in 48 hours, the landlord can contact the Boulder County Sheriff's Office to assist in the forcible removal of the tenant and the tenant's possessions from the rental property.

- If personal service was obtained on the tenant, the landlord will probably be able to get a Judgment against the tenant for the money owed the landlord.
- Tenant and landlord may negotiate an agreement allowing more than 48 hours to move out.
- If the tenant agrees to move from the rental property, the tenant and landlord may negotiate the amount of money owed and a payment plan.
- The landlord and tenant may be able to come to an agreement allowing the tenant to remain in the rental under negotiated conditions.
- If the tenant has filed an Answer, a hearing may be set for a later date when both parties will need to return to Court.
- The Court may continue the court date so that the landlord can properly comply with the procedural requirements.

TYPICAL EVICTION TIMETABLE

DAY	EVENT
-	Nonpayment of Rent
1	Landlord serves tenant with 3-day Notice to pay rent or move out
4	Tenant must pay rent owed or move out
5	If tenant does not pay or move, landlord may file an eviction action in County Court and serve tenant with Complaint and Summons
10-15	Tenant may file Answer. Tenant has at least 5 days, but no more than 10 days, to file an Answer. Answer must be filed by return date specified in Summons. Trial date set by Court.
10-15	Return Date. If tenant does not file an answer, Default Judgment is entered in favor of the landlord.
12-22	If Judgment for Possession entered, landlord can have sheriff assist tenant from rental if not moved out within 48 hours of time order entered. Actual date depends on appointment made between landlord and sheriff.
10-20	If tenant filed Answer, trial may be scheduled within 5 days of return date.

Adapted from Manual A. Ramos, Rights and Obligations: Colorado Landlord-Tenant Law From the Perspective of a Tenant Advocate, Fourth Edition (Continuing Legal Education in Colorado, Inc. 2006).

EVICTION FROM A HOTEL, MOTEL, INN, BOARDING HOUSE OR OTHER TEMPORARY SHELTER FOR TRANSIENT GUESTS

The eviction of transient guests from these units can be confusing to lawyers, police, owners, transient units and even judges. Answers regarding eviction in this area are based on interpretation of the Unlawful Detainer Statute, the Landlord Lien Statute and laws regarding fraud. The discussion here is general, indicating some of the legal issues which can be involved. When you encounter a situation of this type, you should seek legal advice for more definitive answers.

The Unlawful Detainer Statute (C.R.S. §13-40-104)

The Unlawful Detainer Statute states that a tenant is in unlawful detainer of a rental unit "when a tenant or lessee holds over [in a tenement] pursuant to the agreement under which he holds, and three

day's notice in writing has been duly served upon the tenant or lessee holding over, requiring in the alternative the payment of the rent or possession of the premises." Tenant is defined as "one who leases premises from an owner (landlord) or from a previous tenant, thereby becoming a subtenant" and tenement is defined as "any house, building or structure attached to land and also any kind of human habitation or dwelling inhabited by a tenant." (*Barron's Law Dictionary*, 2nd Ed.).

The Unlawful Detainer Statute indicates a specific process that the owner must go through to evict a tenant from a property. (See page 13 of this *Handbook*, The Eviction Process). While the statute does not specifically indicate that the owner of a hotel, motel, inn, boarding house or other rental of temporary shelter to transient guests must follow the statutory eviction process, Colorado case law supports the need for legal eviction when removing a transient guest from a rental.

The Landlord's Lien Statute (C.R.S. §38-20-102(3)(a) thru (c))

The Landlord's Lien Statute states, "Any person who rents furnished or unfurnished rooms or apartments . . . as well as the keeper of a trailer court . . . shall have a lien upon the tenant's personal property . . . on or in the rental premises. The value of the lien shall be for the unpaid board, lodging or rent, and for reasonable costs incurred in enforcing the lien, not including attorney fees." A Landlord Lien is defined by *Barron's Law Dictionary* as the landlord's "right to levy upon the goods of a tenant in the satisfaction of unpaid rents." Under the statute, a landlord may seize property in a reasonable and peaceful manner. Section 1 of the Statute defines the rental of temporary shelter or temporary trailer space as "shelter or trailer space which is rented for a fee for a period of time not exceeding one month, but excluding month to month tenancies which have been in effect for at least four months." Legal precedent indicates that the Landlord's Lien is a pre-judgment remedy, while eviction is a post-judgment remedy. Thus, it might be assumed that a landlord cannot use the statutory procedure to assert a lien against the tenant's property and also lock the tenant out of the property.

The landlord cannot assert a lien against small kitchen appliances, cooking utensils, beds, bedding, necessary wearing apparel and personal or business records and documents. Items covered by the lien include household furniture, goods, appliances and other personal property of the tenant and household members. This area of lien law is vague and a landlord should proceed extremely cautiously when exercising lien rights. First, seizure of a tenant's property might promote physical confrontation between the landlord and tenant. Also, some lower courts have declared the law unconstitutional because it gives landlords rights not given to other creditors and it may be seen as depriving a tenant of due process and equal protection. To ensure that the landlord is proceeding in accordance with the law and not putting themselves at risk of physical confrontation or of damage claims by the tenant, the landlord should seek legal counsel. Tenants who have had property seized by a landlord should also seek legal advice.

ABANDONED PROPERTY

Personal property is considered abandoned if:

- 1) The tenant has not contacted the landlord for at least 30 days, **and**
- 2) There is nothing to lead the landlord to believe that the tenant is not abandoning the possessions.

If a former tenant leaves possessions behind, the landlord should make a reasonable effort to contact that tenant. If the landlord is not able to contact the tenant, the landlord may proceed to sell or dispose of the personal property. By law, the landlord must give the tenant at least 15 days written notice by registered or certified mail, addressed to the tenant's last known address, before selling or disposing of the property. If the last known address is the landlord's rental property, send the notice to that address. If the tenant has not left a forwarding address and the notice is returned, the landlord

should retain the notice, unopened, in a file should the tenant later assert that no notice was given. To further reduce the chance of future liability, the landlord could obtain a Writ of Restitution. (See page 13 of this *Handbook*, The Eviction Process). If the abandoned property is a motor vehicle, because a motor vehicle is titled, the procedure to remove it is different. If that is your situation, it is **advisable to seek guidance from local law enforcement or an attorney.**



SECURITY DEPOSITS

WHAT IS A SECURITY DEPOSIT?

A security deposit, also called a damage deposit, is any advance deposit of money used to secure the performance of the lease. Residential security deposits are regulated by C.R.S. §38-12-101 *et seq.* There is no statutory regulation of commercial security deposits.

REASONS TO WITHHOLD A SECURITY DEPOSIT

A landlord may keep all, or a portion, of the security deposit for any of the following reasons:

- Unpaid rent owed by the tenant
- Unpaid utility bills
- Cleaning required to restore the rental to the condition it was in when the tenant moved in
- Cleaning services, for example, a professional rug shampoo, agreed to under the lease
- Payment for damages to the rental beyond “normal wear and tear”
- Any other breach of the lease causing financial damage to the landlord



“Normal Wear and Tear”

Colorado defines “normal wear and tear” as “deterioration which occurs based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment . . . by the tenant or . . . household or . . . guests.”

C.R.S. §38-12-102(1). “Normal wear and tear” is caused by normal, everyday use.

Damage is injury to the premises beyond normal wear and tear, caused by irresponsible unintentional actions or intentional actions (see page 64 of this *Handbook*, Appendix E, Depreciation Schedule). For example:

Normal Wear & Tear

Worn and dirty carpet

Faded curtains

Worn out keys

Dirty window screens

Faded, chipped paint

Damage

Torn, stained, or burned carpet

Torn or missing curtains

Lost keys

Torn or missing screens

Hole in the wall

RETURN OF SECURITY DEPOSIT (C.R.S. §38-12-103)

If the tenant has fulfilled all of terms of the lease, has paid the rent in full and on time every month, has left no financial obligation for the landlord to cover and has caused no damage beyond normal wear and tear, the tenant is entitled to the return of the entire security deposit. No Colorado state law or Longmont ordinance requires a landlord to pay interest on security deposits held by the landlord.

Tenants should arrange to either collect the security deposit from the landlord in person or leave a forwarding address, so the landlord can mail the security deposit to them. When roommates have co-

signed a lease, a landlord may either divide the security deposit reimbursement equally among the tenants or reimburse the entire return amount to one tenant. Ideally, tenants should agree in advance how the security deposit reimbursement is to be divided and provide the landlord with their written, signed agreement.

After a tenant leaves a rental property, the landlord has 30 days (unless a longer period of time, not to exceed 60 days, is agreed to in the lease) to either

- 1) Return the security deposit in full, **or**
- 2) Return a portion of the deposit along with a written list of expenses incurred by the landlord or damages caused by the tenant and the cost of the necessary expenses or repairs. If the deposit amount is larger than the cost of the expenses or repairs, the landlord must return the balance of the deposit. The landlord is not required to provide the tenant with copies of receipts for expenses or repairs in addition to the written list, though doing so as a courtesy may be appreciated by tenants as helpful clarification.

TENANT'S RECOURSE FOR WITHHELD SECURITY DEPOSITS

If the landlord does not either return the entire security deposit or send an itemized list of deductions, along with any remaining portion of the security deposit, within the required time period, the landlord forfeits all rights to withhold any of the security deposit. (C.R.S. §38-12-103(2)). If the landlord does provide a list of deductions and the tenant disagrees with the deductions taken for expenses and damages, or if the landlord has not provided such a list, within 30 days (or up to 60 if specified in the lease), the tenant may send a **“Seven-day Demand Letter”** to the landlord, itemizing the charges with which the tenant disagrees and stating that **the tenant may sue the landlord for three times the amount of the deposit** withheld if the entire deposit or the disputed portion is not returned to the tenant within seven days of receipt of the letter. The Seven-day Demand Letter should be sent certified mail, return receipt requested. Additionally, the tenant should keep a copy of the letter. If the landlord returns the security deposit in full or pays the tenant the disputed portion within seven days, the matter is resolved. (See page 65 of this *Handbook*, Appendix F, for a sample Seven-day Demand Letter.)



A Seven-day Demand Letter must include:

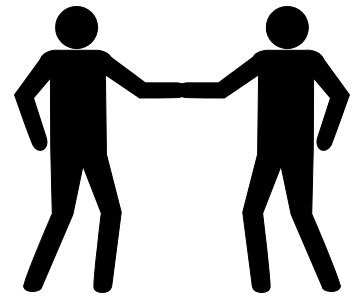
- **The address of the rental property**
- **The dates of the occupancy**
- **The amount of the security deposit originally paid**
- **The tenant's current mailing address**
- **An explanation of the disagreement regarding the portion of the deposit withheld, if applicable**

If the tenant does not hear from the landlord within the seven days specified by the demand letter, the tenant can then pursue legal action. A tenant **must** give the landlord a Seven-day Demand Letter prior to pursuing legal action. If the amount claimed by the tenant is \$7,500.00 or less, the tenant may initiate a case through Small Claims Court. As of January 2010, the filing fee for claims up to \$500 is \$31.00; for claims over \$500 and up to \$7,500, the filing fee is \$55.00. If the tenant claims more than \$7,500.00, the tenant has to file in County Court (check with the Court Clerk for current filing fees, as they are subject to change without notice). (See also www.courts.state.co.us/district/20th/20dist.htm)

ROOMMATES

This section has been borrowed from a list of recommendations prepared by the City of Boulder Community Mediation Service. These suggestions are based on past experience and common sense and are not intended to substitute for legal advice.

Many roommates enter into their living-together relationships with high hopes and positive expectations. Especially if roommates are also friends, they may believe that everything will go smoothly and that all they need is "an understanding" between them. However, people change and circumstances change - best friends do not always make the best roommates.



It is wise to treat the mechanics of house sharing as a business relationship in order to protect the personal relationships between roommates.

FORMING A NEW HOUSEHOLD

Often, the basis of disputes is poor communication or a misunderstanding of mutual expectations between roommates. To minimize misconceptions and false expectations, we recommend:

Communication

Potential roommates should thoroughly discuss their needs, expectations and the general ground rules they each wish to establish in a shared household PRIOR to signing a lease and moving in together. This applies equally to a situation where a new roommate moves into an established household.

Contract

Roommates should draw up and sign a Roommate Agreement which spells out their rights and obligations to each other, and including the following information: (See page 68 of this *Handbook*, Appendix H, for a sample Roommate Agreement)

1. Date of agreement
2. Names of roommates
3. Address of rental property
4. Amount or percentage of rent and utilities to be paid by each roommate
5. Total amount of security deposit paid and portion of that deposit paid by each roommate
6. Agreement that each roommate will pay for damages they cause or damages caused by their guests
7. Agreement by all roommates that, if a roommate moves out prior to the end of the lease term, he or she will continue to pay their share of the rent for the lease term unless the landlord agrees to allow a replacement tenant
8. Agreement about who will be responsible for finding, interviewing and deciding on new roommates

9. Agreement that each roommate will pay a specific share of the cost of any repairs, improvements or other costs incurred in the operation of the household or due under the lease
10. Other agreements the roommates think appropriate
11. Signature of every roommate

The Roommate Agreement is just that: a written confirmation of agreement among the roommates. It is not binding upon the landlord unless the landlord also signs the document. The lease is the agreement between tenants who sign the lease and the landlord. Tenants need to pay particular attention to their joint and several liability to the landlord, as explained below on this page.

When inevitable problems do arise, roommates should talk to each other and try to work them out at the time they occur rather than waiting until those small problems build up into irresolvable resentments.

CHANGING ROOMMATES

One of the most common problems occurs when one roommate in a household wants to move out. When a roommate leaves before the end of a lease term, good communication and great care are needed to minimize confusion and to prevent exposing the remaining roommates to additional financial obligations.

Joint and Several Liability

Each tenant who has signed the lease is responsible to the landlord for the rent for the entire lease term, whether living on the premises or not. If more than one person has signed the lease, each person individually is responsible for paying the rent in full, and also all persons collectively are responsible for paying the rent in full. If one roommate moves out and does not pay their share of rent owed, all other roommates must pay their individual rent portion, plus any amount not paid by the departed roommate. If the rent is not paid to the landlord in full, they will all be subject to eviction for nonpayment of rent. The remaining roommates must then try to collect whatever they can from the departed roommate for rent paid on his/her behalf.

Procedure When One Roommate Moves Out

The following is a list of procedures for departing roommates, which may help prevent problems. If you are a roommate who is planning to move before the end of the lease term, you should:

1. Talk to your roommates about your intention to move.
2. Make sure to understand how the lease might affect your decision to leave:
 - a. Is subletting/assignment prohibited? Even if the lease prohibits subletting, the landlord cannot unreasonably refuse to sublet.
 - b. Is the permission of the landlord required before you can sublet or assign?
 - c. Does the landlord's permission have to be in writing?
 - d. Are there special conditions that must be met before subletting or assigning?
 - e. Does the lease say that only those persons named in the lease can occupy the premises?

3. Discuss with your roommates how to arrange for a replacement roommate:
 - a. What type of person is acceptable to the other roommates (reasonable criteria)?
 - b. Who will arrange and pay for advertising?
 - c. Who will receive calls and show the unit?
 - d. What kind of agreement can you make with your other roommates to continue paying rent until a new roommate is found and moves in?
4. Contact your landlord to find out how the landlord would like to handle:
 - a. Approval of a new tenant
 - b. Old and new tenants' relationship to the lease
 - c. Old and new tenants' security deposits.

Note: Even if the lease does not require the landlord's permission to sublet, it is to the tenants' benefit to communicate and work things out with the landlord.

Types of Subletting and Assignment Arrangements

There are many versions of subletting/assignment/replacement. Landlords and tenants may wish to negotiate with each other to determine which version works best in their particular situation. Below are a few options. The landlord is not obligated to accept any of these options but, again, may not **unreasonably** refuse.

Option A: The landlord terminates the old lease. A new lease is signed between the landlord and the remaining tenants, and including the new tenant. Once the new lease is signed, the departing tenant has no further liability for rent. The landlord returns the old security deposit, less damages, and collects a new deposit from the remaining tenants and the new tenant. This alternative is probably the cleanest arrangement. However, few landlords do this, as it involves substantial work on the landlord's part.

Option B: The landlord amends the existing lease, adding the new tenant's name and removing the departing tenant's name. The departing tenant has no further liability for rent. The new tenant pays the departing tenant an amount of money equal to the departing tenant's security deposit. The new tenant now assumes all liabilities of the departed tenant, **including liability for previous damages**. The landlord will then owe any security deposit refund to the new, rather than the departed, roommate. This transaction should be documented **in writing** in an agreement signed by old roommates, the new roommate, and the landlord.

Option C: The departing tenant sublets to the new tenant. The departing tenant remains on the lease and is liable for all lease obligations for the remainder of the lease term. Below are some examples of ways in which this option might work for the involved parties.

1. The new tenant signs a sublease agreement and pays the deposit to the departing tenant, who retains the new tenant's deposit. In this case the landlord retains the original tenant's security deposit. When this option is used, the original tenant remains liable for all rent and damages until the end of the lease term. If the new tenant does not pay rent, the other roommates and the landlord can look to the original tenant for the payment. Due to "joint and several liability," the

landlord can also look to the other remaining tenants for the balance of money owed. At the end of the lease term the landlord returns the deposit, less damages, to the original tenant and the original tenant returns the deposit, less damages, to the new tenant. This may prove to be an unworkable option if the whereabouts of the original tenant are unknown or far away or if the original tenant is not cooperative, making collection of rent or other obligations difficult for the new tenant, the remaining roommates or the landlord.

2. The new tenant pays a deposit to the landlord and the landlord retains the deposit of both the original tenant and the new tenant until the end of the lease term, at which time the deposits are returned through the ordinary procedure.
3. The new tenant pays a new deposit to the landlord and the landlord returns the deposit paid by the original tenant.

Option D: A hybrid or combination of the above options and/or other agreements worked out between the parties (e.g., a departing tenant might subsidize a new tenant's rent; a departing tenant might pay a fee to the remaining tenants with the agreement that they will secure a new roommate.)

REMEMBER: When you are involved in a "joint and several liability" relationship and money is withheld from your deposit, the landlord does not have to determine who is responsible for damages or expenses. Each time a tenant is replaced, it is in the best interest of everyone to do a new walk-through of the unit to ascertain damages before the new tenant moves in.

It is wise to explore these options with your landlord when signing a lease and to additionally specify in a separate Roommate Agreement exactly which procedure will be used if a roommate moves.

Note: In these alternatives, departing tenants may not substitute their security deposit for rent payment, in the absence of an agreement allowing them to do so.

MEDIATION

Mediation is often a good way to resolve roommate disputes if discussions fail. Where there has been a turnover of roommates, it may be difficult to sort out legally who is responsible to whom, for what, if an agreement was not made in advance. Mediation provides an opportunity for old and new roommates to identify issues and discover a solution that works for them. It is important to be sure that all involved parties participate in the mediation process. Reaching agreement may be impossible if individuals integral to the dispute are not available. **The City of Longmont Mediation Services can be reached at 303-651-8444.**