Landlord-Tenant Handbook

Rights and Responsibilities for Residential Landlords and Tenants

Housing and Human Services Department

Community Mediation and Resolution Center

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INTRODUCTION

This handbook was prepared by the City of Boulder Community Mediationand Resolution Center (CMRC) and reviewed by the Boulder City Attorney's Office. It summarizes existing State of Colorado and City of Boulder residential landlord-tenant law and describes best practices for matters relating to residential rental properties.

Colorado Revised Statutes (CRS) and the Boulder Revised Code (BRC), which regulate rentals, as well as the United States Code (USC), are cited in this handbook and an understanding of these laws can be valuable to tenants and landlords in preventing problems before entering into a lease, during the lease period, or upon termination of thelease.

Information contained herein is current as of November, 2023 but there is no assurance that the laws have not changed or been amended through subsequent court decisions or legislation. This information does not constitute legal advice and is intended to serve only as a general guide. It should not be used as a substitute for seeking advice from an attorney or other qualified professionals.

It is strongly recommended that an attempt be made by both tenants and landlords to work out differences before seeking outside assistance. If differences arise which the parties are not able to resolve on their own, residents in the city or county of Boulder (excluding City of Longmont) can contact the City of Boulder Community Mediation and Resolution Center (CMRC) at 303-441-4364 or submit a request for services using the online form. CMRC uses neutral, third-party mediators to assist in resolving disputes between landlords and tenants or between roommates. Mediations may take place online or in-person depending on the needs of the parties. There is currently no fee for this service.

Mobile Homes

The laws governing manufactured housing (mobile home) communities are often separate from those governing other landlord-tenant relationships. A separate guide with information on manufactured homes is available on the City of Boulder website.

COMMUNICATION AND DOCUMENTATION

Landlords and tenants should make an effort to communicate effectively and engage in a collaborative relationship. Both parties should keep good records, including copies of emails, text messages, notes, letters, and photographs. Make all agreements specific, put them in writing, and follow through with them.

Increasingly, text messages and emails are considered acceptable written documentation, particularly if there is a history of such communication between the parties. But, by law, and/or according to most lease contracts, certain communication and notifications must be documented on paper and it is preferable that certain agreements such as lease amendments, extensions, or subleases be on paper.

LEASES

A lease is a legally binding contract between a landlord and a tenant that grants the tenant exclusive use of the landlord's property for a given period of time in exchange for rent money. In the city of Boulder, all leases must be in writing if the rental period is 30 days or more (BRC §12-2-3).

A lease will set forth the terms, such as rent, length of the lease, and rights and responsibilities of both landlord and tenant. Lease terms can be negotiated, but once a lease is signed, there is no grace period allowing for either of the parties to back out. A lease must include the name and address of the landlord or landlord's authorized agent. Any change of name and address must be provided to the tenant no later than one business day after the change (CRS. § 38-12-503).

It is good practice for landlords and tenants to review the lease together before signing it. City of Boulder law requires that the lease must be signed within 30 days after the rental period begins and the landlord must provide each lessee with a copy within seven working days after all parties have signed, or within 15 days after the date of signature by any tenant, whichever is sooner (BRC §12-2-3). Colorado law also requires a residential landlord to give a tenant a receipt for any payment made in person with cash or a money order. For payments not made in person with cash or a money order, the landlord must provide a receipt if the tenant requests it. The landlord may provide the tenant with an electronic copy of the lease or the receipt unless the tenant requests a paper copy (CRS §§ 38-12-801 and 38-12-802).

A copy of the Boulder Model Lease, endorsed by the City of Boulder, can be found on the city website.

Definitions of Parties to a Lease

- **Landlord** an owner, manager, lessor, or sublessor of a residential premise (CRS §38-12-502(3))
- **Tenant** a person entitled under a rental agreement to occupy a dwelling unit tothe exclusion of others (CRS §38-12-502(6))
- **Property Manager** a person or company who is usually paid a fee to operate a property

TYPES OF LEASES

Fixed Term Lease (also known as “Definite Term Lease”)

This is the most common type of lease. If a lease is for a specified period of time, (e.g., nine months or a year), or has a definite ending date, it is a “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 the specified 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 move out unless the tenant signs a new lease or stays on as a month-to-month tenant with the landlord’s express consent. Express consent is direct, clear communication with nothing left to guesswork or assumptions.

Neither the landlord nor the tenant needs to give notice of termination at the end of a term lease unless the lease states that such notice is required. However, if no notice is required in writing, it is strongly recommended that landlord and tenant communicate with each other to avoid misunderstandings about what will happen at the end of the lease term. Some landlords require tenants to sign a new lease by a certain date prior to the ending date of the current lease.

Month-to-Month Lease

This is an agreement to rent for one month at a time. In these leases, the tenancy automatically renews each month unless either the landlord or tenant gives written notice that they wish to end the tenancy. When a landlord and a tenant have not executed a written lease and rental payments are paid monthly, a month-to-month lease is implied by law.

A month-to-month lease is common after an expired written fixed term lease is not renewed but the tenant remains in the property as a “holdover,” with the landlord’s express consent. In such a case, if the written fixed term lease contains a clause stating that all lease provisions continue to apply after the written fixed term 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 fixed term lease, remain in effect. In the absence of such a clause, and if no communication has taken place to the contrary, the rights and responsibilities of the original lease remain in effect.

With a month-to-month lease, the landlord can raise rent as permitted by law (see more information under “Miscellaneous”) and change or terminate the agreement with proper written notice to the tenant as permitted by law. The tenant, likewise, can terminate the lease 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 21 days before the last day of the rental period (CRS §13-40-107(1)(c)). However, a written month-to-month lease may require a longer notice period, for example, 30 or 60 days before the end of the rental period (see pg. 28).

Tenancy at Will

Where no time is specified for the termination of a tenancy, the law may consider it to be a “tenancy at will.” A tenancy at will exists only when the occupation of the property is with the landlord’s consent, and it stays in effect until the landlord or tenant terminate the agreement. By statute, a tenancy at will can be terminated with a three-day “notice to quit” given by either party (CRS 13-40-107(1)(d)).

Holdover Tenant

A holdover tenant is someone who remains in the property after their original lease term ends. If the tenant is allowed to stay by permission of the landlord, the original lease conditions remain in effect, although a new lease with new terms may be negotiated. The acceptance of rent by a landlord after the lease expires creates a holdover tenancy. Unless otherwise agreed, the amount of rent paid determines the amount of time a tenant may remain, such as a month-to-month arrangement in which the rent is paid one month at a time. A holdover tenant who remains in the property without the landlord’s permission may be evicted.

Common Lease Components

- **Rent:** Amount of money to be paid and when it is due
- **Grace periods and penalties:** Date when rent payment is considered late and fees for late payment
- **Term of Possession:** How long the lease is in effect
- **Utility payments:** Who is responsible for paying for services such as water, trash, and electricity
- **Repairs*:*** Who is responsible for minor and major repairs to the rental property, appliances, plumbing, heating, and cooling units, etc.
- **Privacy:** Circumstances under which the landlord may enter the unit, includingthe length of notice required to give the tenant, times of day for entry, whetherthe tenant must be present, emergencies, repairs, showing for sale or rental
- **Snow removal, garbage collection, lawn care:** Who will be responsible for such upkeep and who is providing the necessary tools
- **Sublet and/or assignments:** Requirements for replacing tenants during the lease term
- **Security deposit guidelines:** 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, among other expectations
- **Use prohibitions:** Specific things that are not allowed such as pets or smoking. If there are no specific restrictions, a tenant may make use of a unit for any purpose notillegal or in violation of local ordinances and which does not create a nuisance or cause damage to the property.
- **Other specific agreements:** Modifications and additions to lease agreements may be made by mutual consent of all parties as long as they are legal

Other Lease Considerations

Non-renewal of a Lease

In the state of Colorado landlords may choose not to renew a lease and are not required to give a reason why.

Smoking

Smokers are not a protected class and there is no “right to smoke.” The Colorado Clean Indoor Air Act prohibits smoking in restrooms, lobbies, hallways, and other common areas of apartments (CRS §25-14-204). Property owners may specify in the lease if a

home or unit is smoking or non-smoking. Property owners may apply the damage deposit to cover the cost of cleaning and repairs associated with smoke damage.

The City of Boulder also regulates smoking. The Boulder Revised Code prohibits smoking in any common area of a building containing attached dwelling units, including lobbies, hallways, and elevators (BRC §6-4-3). Landlords (or homeowners associations) may further regulate smoking by prohibiting smoking on porches, balconies, or within a certain proximity to the building. Tenants should request information about the property's smoking rules before signing a lease.

Marijuana

The laws surrounding the use and cultivation of marijuana have been changing in recent years making it difficult to navigate this issue. As of the date of this handbook's publication, adults over the age of 21 can legally possess up to one ounce of marijuana and grow up to six plants. However, the laws pertaining to marijuana possession and use are different on a federal level, making it particularly challenging to determine what is permissible. At this time, marijuana is still a Schedule I substance under the federal Controlled Substances Act, meaning that the federal government believes it has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision (21 US Code § 812).

Ultimately, under Amendment 64 to the Colorado Constitution, a landlord has the right to prohibit the possession, growing, or use of marijuana in a property. This should be stated clearly in the lease, similar to a no-smoking or no-pets clause. Landlords should keep in mind the Federal Fair Housing Act and the City of Boulder's Human Rights Ordinance which bars landlords from discriminating against tenants of protected classes, including those with a disability. A tenant may be using medical marijuana to treat a qualifying disability under the Fair Housing Act and in this case, a landlord should consult with a private attorney or the Colorado Division of Human Rights Fair Housing office to determine appropriate action. Housing and Urban Development (HUD) guidelines for federally subsidized properties may also apply to the possession, use, or growth of controlled substances in rental properties under federal law.

Renter's Insurance

If the lease does not contain a clause requiring the landlord to compensate the tenant for damage to personal property, the tenant would be wise 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 itself. Depending on the terms of the policy, renter's insurance may

also cover damage to other people's property that originated in the insured party's apartment or was caused by the insured party's negligence. It may also cover alternate accommodations if the tenant is displaced due to condition issues in the rental property.

Some leases require the tenant to have renter's insurance. If this is something both parties agree to, this requirement will be binding. If the tenant does not want to be required to carry renter's insurance, they should negotiate with the landlord before signing the contract or rent elsewhere.

Roommates and Joint and Several Liability

When more than one tenant signs a lease, unless the lease says otherwise, each tenant is individually responsible to the landlord for all of the conditions and responsibilities of the lease, including rent. In legal terms, this means that every signer of the lease is "jointly and severally liable" for the actions of every other signer, meaning they are individually or collectively responsible for fulfilling the lease.

To prevent problems from arising between roommates, they are encouraged to create a written "roommate agreement," which discusses the obligations each tenant has to the others. An agreement should include what portion of rent each roommate will pay, responsibility for damages, division of payment for utilities, duration of the rental period, responsibility for finding a replacement tenant if one roommate moves out early, and payment of rent until a replacement is found. A roommate agreement may address lifestyle matters that affect compatibility such as quiet hours, cleanliness, or visitors. However, a roommate agreement cannot change the conditions of the lease. When there is a roommate problem, typically only the landlord can evict one of the roommates. If someone other than the owner of the property is seeking the eviction of atenant, assistance from an attorney is recommended. Legal advice should also be sought in cases where confusion exists regarding legal rights and responsibilities by anyof the roommates, such as in sublease situations.

Arbitration and Mediation Clauses

Some leases contain clauses that require parties in conflict to resolve their dispute through arbitration or mediation. In arbitration clauses, tenants may give up their rightto go to court altogether and must rely solely on the determination of an arbitrator who has the power to make binding decisions.

Attorney Fees and Damages

The winning party in an eviction or other legal action brought under the Forcible Entry

and Detainer Statute may be able to recover damages, reasonable attorney fees, and court costs, depending on the language of the lease. If a court finds that a tenant wrongfully remained in the property after termination of the lease, the court could require the tenant to pay the reasonable rental value for the duration of the wrongful possession.

Lease Modifications

Lease terms and provisions can be modified ONLY if both the landlord and tenant agree to the changes and if the conditions they are agreeing to are legal. To avoid miscommunication, it is best to put these changes in writing, signed and dated by both the landlord and tenant. If there is ever a legal dispute about the terms of the lease, the court will default to what is in writing. As a result, it is a good practice to document even minor changes to the lease in writing. Do not rely on verbal commitments.

Lease Disclosures

In the city of Boulder, landlords must provide tenants with written information about certain city regulations (BRC §12-2-4). This disclosure includes requirements regarding occupancy, noise, fireworks, snow removal, etc. Colorado state law also requires landlords to provide a lead paint disclosure.

Beware of 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. Any party who has a question concerning the enforceability of a lease should seek legal advice. Some examples of unenforceable clauses are:

- Requiring a tenant to waive the right to the return of the security deposit or the interest on a security deposit (BRC §12-2-8)
- Waiving a landlord's responsibility for acts of gross negligence
- Requiring a tenant who has been called into military service to pay for the remainder of rent due for their entire term after the tenant has provided the required documentation to the Landlord for relief (Federal Soldiers and Sailors Civil Relief Act; 50 USC App. § 534)
- Requiring a tenant to waive the Warranty of Habitability (CRS §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 (CRS §§13-40-101 thru 123)

- Waiver to a jury trial or participation in a class action lawsuit against a tenant's landlord
- Fees for tenants not providing notice of nonrenewal of a lease
- A provision that characterizes any amount or fee set forth in the rental agreement, with the sole exception of the set monthly payment for occupancy of the premises, as "rent" for which all remedies to collect rent, including eviction are available
- Markup fees to be paid by the tenant for services that are billed to the tenant by a 3rd party of more than 2% of $10.00

BEFORE MOVE IN

Walk-Through

Landlords and tenants should do a walk-through of the property together and complete a move-in checklist. A move-in checklist allows the tenant and landlord to enter the lease with a similar understanding of the rental property's condition. Any potential problem areas where repairs are needed should be noted along with an agreed-upon timetable in which to make those repairs. A move-out checklist should be completed during a final walk-through. These before-and-after comparisons can help prevent disputes regarding the security deposit.

Additionally, it is a good practice to take date-stamped photographs or date-stamped video of the property at the beginning and end of the rental period to accurately record the property's condition. The general cleanliness of the property should be noted, as the expectation is that it should be returned to a similar state when the tenant moves out (unless otherwise agreed to by both parties) minus normal wear and tear. Some landlords and tenants also find it helpful to have a neutral third party, such as a neighbor, accompany them on the walk-through.

Rental Applications and Background Checks

Landlords may require credit checks and criminal background checks of prospective tenants. However, if a landlord requires one prospective tenant to provide information for a background and credit check, they must require the same information from all prospective tenants. Landlords may consult a lawyer to make sure they comply with all the requirements as put forth by the Fair Credit Reporting Act, (FCRA, 15 USC §1681 *et seq*.), as well as the requirements of state law. Tenants, in most circumstances, can also provide their own screening report provided by an independent credit reporting agency.

If a tenant is providing their own screening report, it must contain the following information to be acceptable:

- Tenant's name
- Contact information
- Verification of employment and income
- Last known address
- Rental, credit, and criminal history for each jurisdiction identified within the consumer report
- Timeframe for which the previously listed information is current

A landlord must accept the screening report unless they are accepting and collecting screening reports one at a time. The landlord can request that the screening report was created within the last 30 days and is sent directly from the independent credit reporting agency.

If a landlord is obtaining the credit report, they must provide a tenant a copy upon request. Landlords are required to notify prospective tenants of their ability to provide their own screening report in a variety of forms during the lease-up process. The only exception to this is, again, if the landlord is accepting one application at a time and screening reports one application at a time.

Landlords need written permission from applicants to conduct a credit report. The landlord may not consider any rental history or credit history more than 7 years immediately preceding the date of the application. A landlord may not consider the credit score or adverse credit events for applicants applying with a government subsidy (e.g. Section 8 Voucher). A landlord cannot require an applicant to make more than double the monthly rent. If a landlord uses criminal history when considering an application, the landlord may not consider an arrest record from any time or any conviction that occurred more than five years before the date of the application, except in the following cases:

- The unlawful distribution, manufacturing, dispensing, or sale of a material, compound, mixture, or preparation that contains methamphetamine
- The unlawful possession of materials to make methamphetamine and amphetamine
- Any offense that required the prospective tenant to register as a sex offender; or

- Any offense related to homicide or stalking (CRS §38-12-904).

If a landlord collects a rental application fee from the prospective tenant and does not use the entire amount to cover the cost to process the application, the landlord must refund the remaining amount to the prospective tenant. The landlord must make a good faith effort to issue the refund within 20 days after processing the application (CRS §38-12-903). If a landlord denies a rental application, they must provide the prospective tenant a written notice of the denial that states the reasons for the denial (CRS §38-12-904 (2)(a)).

Security Deposit

Also called a damage deposit, a security deposit is a tenant's advance payment of money to the landlord to protect against future lease violations by the tenant, including nonpayment of rent and property damage beyond ordinary wear and tear (CRS §§38-12-101 through 104). The amount of the security deposit, which can be no more than 2 months' rent, should be specified in the lease. It is best for landlords to deposit security deposit checks into an escrow account and keep security deposit funds separate from other monies such as rents because the landlord will be accountable for returning all or a portion of the deposit at the end of the lease term, plus interest (see pg. 32).

Pet Deposits

A pet deposit is an additional security deposit collected from the tenant as a condition of permitting their pet to reside at the property with the tenant. A pet deposit cannot exceed $300 and must be refundable to the tenant at the end of the lease term. Landlords can charge monthly rent for pets that is not refundable, the monthly amount collected by the landlord for this purpose cannot exceed $35 or 1.5% of the tenant's monthly rent, whichever is greater. Tenants should make sure they understand whether the lease requires a pet deposit or monthly pet rent.

Prepaid Rent vs. Security Deposit

Some landlords choose to collect the last month's rent at the beginning of the lease term. This is different from a security deposit. The last month's rent does not need to be returned if it is used as payment for the last month of the lease. If it is returned for some reason, such as early termination of the lease, the landlord is not required to pay any interest on this amount.

MAINTENANCE, REPAIRS, AND CONDITION ISSUES

When it comes to maintenance and repairs of the rental property landlords and tenants have certain obligations that are determined by law but other matters of maintenance and repair may be determined individually by the landlord and may vary greatly from property to property. Maintenance, repairs, and proper procedures when maintenance and repairs are needed, should be written into the lease and understood by the tenant before they sign the lease.

Landlord Responsibilities

Except for common areas and facilities in multi-unit properties, the landlord is required to repair and maintain the premises only if:

- There is a specific agreement between the landlord and the tenant (such as a lease or lease attachment), which specifies that the landlord is responsible for repairing, or maintaining the premises, or a promise to make specific repairs.
- The repair or maintenance is required to make the property conform to the City of Boulder Housing Code, §10-2-1, *et seq*., BRC 1981, unless the tenant is specifically given this responsibility in the lease. The Housing Code only applies within the Boulder city limits. However, other code requirements may apply in other areas.
- A residential rental is uninhabitable or unfit for the uses reasonably intended by the parties (CRS §§38-12-501 thru 511).
- A residential rental is in a condition materially dangerous or hazardous to the tenant's life, health, or safety (CRS §§38-12-501 thru 511).

Tenant Responsibilities

In addition to any duties written in the lease, tenants are obligated to use the premises in a reasonably clean, safe, and sanitary manner (CRS §38-12-504). Tenants are expected to:

- Comply with building, health, and housing codes related to health and safety.
- Dispose of ashes, garbage, rubbish, and other waste in a clean, safe, sanitary, and legally compliant manner.
- Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, elevators, and other facilities.
- Conduct himself or herself in a manner that does not disturb their neighbors' peaceful enjoyment. Tenants are also responsible for the conduct of guests or others within their premises.

- Promptly notify the landlord if the premises is uninhabitable as defined in CRS §38-12-505 or if there is a condition that could result in the premises becoming uninhabitable if not remedied.
- Not destroy, deface, damage or remove any part of the residential premises or knowingly permit any person within his or her control to do so.

Beware of Withholding Rent for Repairs

A tenant should generally not withhold rent until repairs are made. Similarly, it is risky for a tenant to make the repairs and then deduct the costs of repairs from the rent without prior written consent of the landlord. If a tenant withholds rent, the landlord maybring an eviction suit against the tenant for failing to pay rent. A repair claim may be used as a defense against such an eviction suit in certain situations. (CRS §38-12-507). Tenants are strongly encouraged to talk to an attorney if they are considering these options.

Rental Licensing, Boulder Revised Code, Repairs to Amenities, and Warranty of Habitability

Rental Licensing

A rental license is required for the occupancy of any residential rental property within the city of Boulder, with some exceptions (BRC §10-3-2(b)). Landlords must apply for a rental license through the city's Rental Housing Licensing Office. The city will provide a list of approved inspectors who can inspect the rental property for compliance with the Property Maintenance Code before issuing a license. Anyone may verify the status of a property's rental license by emailing the Rental Housing Licensing Office at Rentalhousinglicensing@bouldercolorado.gov or may search for and view a map of licensed residential rental properties on the City of Boulder website. Contact Rental Housing Licensing for more information about exceptions to this requirement.

Boulder Revised Code

All rental properties in the city of Boulder must conform to Boulder's Property Maintenance Code which establishes minimum standards for the use and safe occupancy of dwellings to protect, preserve, and promote the physical and mental health of its residents. The code covers basic safety and living conditions such as fire safety systems, fire restrictive doors and walls, plumbing, water supply, electrical services, mechanical and heating equipment, cooking devices, windows, doors and egress, floors, walls, ceilings, stairways, space requirements, pest control, food preparation and storage areas, and safe maintenance of utilities and equipment (See

BRC Chapter 10-2 for specific requirements).

Repairs to Appliances and Amenities Not Covered by Boulder Revised Code

Whose responsibility it is to repair certain appliances and amenities not covered by the Boulder Revised Code should be addressed in the lease. Dishwashers, air conditioners and internet devices are examples of amenities landlords are not required to provide and may not be required to repair. Before signing a lease, tenants should be aware of the landlord's practices related to repairs on such items and if not included in the lease, they should request their inclusion or an addendum in writing.

In the absence of written language that addresses who is responsible to maintain these appliances, repairs are performed at the landlord's discretion. Tenants must notify landlords when repairs are needed. Repair expenses may be covered by warranty. Tenants are financially responsible for damages resulting from the tenant's or their guests' abuse or negligence.

Warranty of Habitability (see separate section on mold below)

Every landlord must fulfill certain requirements that make the rental property fit for human habitation (CRS §38-12-503). The Warranty of Habitability defines these requirements, dictates a time frame for the tenant to communicate with the landlord about violations, and if the property is not returned to habitable conditions, provides recourse for tenants if the landlord will not voluntarily terminate the lease. The tenant may have legal recourse to vacate the premises and stop paying rent, and/or certain other remedies. However, the tenant must follow the specific process and specific timeline stated in the Warranty of Habitability (CRS 38-12-507) and is strongly advised to consult with an attorney if they intend to invoke the Warranty of Habitability. If the tenant does not comply with the requirements of the Warranty of Habitability and stops paying rent or vacates the property without following the proper legal procedures, the tenant may be vulnerable to eviction and other legal action.

A property may be uninhabitable if it is in a condition that materially interferes with the tenant's life, health, or safety, or if any of the following are substantially lacking (CRS §38-12-505):

- Functioning appliances (refrigerator, range, stove, or oven, if provided) that conformed to applicable law at the time of installation and that are maintained in good working order
- Waterproofing and weather protection, including unbroken exterior windows and doors
- Plumbing or gas facilities in good working order
- Running water and reasonable amounts of hot water

- Functioning heating facilities
- Electrical lighting
- 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 property
- Exterior receptacles for garbage and rubbish
- Floors, stairways, and railings maintained in good repair
- Locks on exterior doors and locks or security devices on windows
- 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
- Or otherwise, unfit for human habitation (CRS §38-12-503(2)(a))

A landlord does not breach the Warranty of Habitability unless the landlord receives written notice of the condition and fails to act within certain deadlines.

In the case of a breach of the warranty, only in very rare circumstances is the landlord required to provide alternate accommodations.

If the habitability issue was caused by the misconduct of the tenant, any co-occupant, guest, or others under the tenant's control, then such condition does not constitute a breach of the Warranty of Habitability (CRS 38-12-503(3)).

Mold and The Warranty of Habitability

The presence of mold associated with dampness or conditions which, if left unremedied, would materially interfere with the tenant's health or safety may also render a rental unit uninhabitable. However, this does not include the presence of mold which is minor and found on surfaces that normally accumulate moisture as part of their proper functioning and intended use (CRS 38-12-505 (1)(a)).

More About Mold

Mold in buildings can potentially present a significant health issue for building inhabitants. Environmental sampling for mold can help determine the extent of the

problem, the location of mold, and the scale of the remediation, if needed. However, sampling for mold cannot be used to determine if a building is “safe” because there are no quantitative, health-based guidelines that describe “safe” levels for microbial exposure to mold.

If a residential premises has mold that is associated with dampness, or there is any other condition causing the residential premises to be damp, that materially interferes with the life, health, or safety of a tenant, a landlord must normally mitigate the risk from mold (CRS §38-12-503(2.2)). Not all mold constitutes a health and safety risk, and a minor amount of mold is not considered a habitability issue.

If tenants suspect they are experiencing a health issue as a result of mold, they should consult with their healthcare professional and talk to their landlord and/or attorney about their options for early termination of the lease.

Additional information on mold issues is available from Boulder County Public Health (BCPH) or call 303-441-1100.

When Repairs Are Needed

- **Check the Lease:** The lease may state who is responsible for maintaining and repairing the premises. It also may specify how the landlord is to be notified, such as “in writing” or for some property management companies, “through the tenant portal.”
- **Provide a request with a deadline in writing:** Request the repairs be made by a certain date. .
- **Repairs:** Tenant and landlord should cooperate to schedule entry of repairpersons
- **Check for code violations:** For city of Boulder properties, if the tenant suspects a violation ofthe Boulder Revised Code that the landlord won’t address, the tenant may call Rental Housing Licensing at 303-441-3173.or submit a service request online. A housing inspector may come to the property and determine if there is a violation. If the violation is minor, the landlord will be givena reasonable period of time to correct the problem. Fines may be issued or enforcement action may be taken by the city when violations are not corrected.
- **Assess Habitability:** See previous section on Warranty of Habitability to determine if the condition of the property constitutes a breach of habitability and review the options for recourse

- **Seek Legal Advice:** Only in extreme conditions may a tenant vacate the premises and stop paying rent. This remedy should never be attempted without first talking to an attorney.

Reasonable Time Frame for Repairs

It can be helpful for both landlords and tenants to more specifically define a "reasonable" time frame in writing prior to signing the lease. However, what is considered reasonable is often determined on a case-by-case basis. There may be situations that are out of the landlord's control, such as a rare part on back-order to fix a furnace, or lack of availability of repairpersons, contractors, or materials. Regardless, landlords must make an effort to uphold the tenant's right to habitability and quiet enjoyment; for instance, providing space heaters until the furnace can be fixed.

Repair Tips for Tenants

- Keep a copy of all correspondence with the landlord.
- Follow-up any verbal agreements with a letter confirming the agreement.
- Be reasonable in allowing the landlord time to make the repairs.
- Consider proposing alternative compensation if repairs are not made, such as rent reduction or early termination of the lease without penalty.

Carbon Monoxide (CO) Detectors

Colorado law requires rental properties (either single family or multifamily), that use fuel heaters, appliances, or fireplaces or have attached garages, to provide Carbon Monoxide (CO) detectors with alarms. "Fuel" means coal, kerosene, oil, fuel gases or other petroleum or hydrocarbon products. Colorado law specifies:

- The landlord is responsible for the maintenance of the detector when they are notified in writing by a tenant that the batteries need to be replaced or when the detector was stolen, removed, found missing, expired or found not to be operating.
- It is illegal for a tenant to remove the batteries from a CO detector unless the batteries are being changed, or inspection or maintenance of the alarm is being performed.
- If the property has a centralized alarm system with a CO detector, the alarm must be within 25 feet of a fuel-fired heater, or appliance, fireplace, garage or in a location specified in local building code.
- No CO detector is required if the property has no fuel burning appliances and no

attached garage (CRS §§38-45-101 thru 106).

Vermin

Boulder follows provisions of the International Property Maintenance Code (IPMC), which requires buildings to be kept free of insect and rodent infestations. The code also states such infestations should be addressed using approved processes that are not harmful to human health. After pests are eliminated, proper steps should be taken by both landlord and tenant to prevent a recurrence. An owner of a structure is also responsible for pest elimination prior to renting the property.

Vermin issues in a residential rental property are also addressed by Colorado's residential Warranty of Habitability law in that a residential premise is deemed uninhabitable if it substantially lacks appropriate extermination in response to the infestation of rodents or vermin throughout the residential premises.

If a landlord fails to mitigate a vermin problem after being informed of the issue in writing and having had a reasonable period to address the issue, a tenant may pursue a Warranty of Habitability claim (see page 12).

The IPMC also holds the occupant of a structure responsible for keeping the property free of rodents and pests. In a single-family dwelling, the occupant is responsible for pest elimination on the premises. Therefore, tenants may have some responsibility for mitigating a vermin issue if they were responsible in some part for the infestation. For example, a tenant who created an unsanitary situation that attracted the vermin may be obligated to contribute to remedying the issue. Additionally, if a tenant is uncooperative with a landlord who is attempting to address the situation (e.g., not allowing access of exterminators), it may shift some responsibility for the issue back onto the tenant.

In multiunit properties, the owner is responsible for pest elimination in common and exterior areas. If an occupant causes an infestation, both owner and occupant bear responsibility for pest elimination. In instances where infestations are caused by structural defects, the owner is responsible for addressing the problem.

Bed Bugs

To properly address bed bug issues both tenant and landlord must follow specific guidelines determined by Colorado law. A tenant must promptly notify the landlord in writing or electronically when the rental unit contains bed bugs (CRS 38-12-1002), and the tenant must keep proof of delivery of any electronic notice. The landlord must then

give required advance notice to the tenant and obtain an inspection of the unit by a qualified inspector within 96 hours of receipt of the notice. If bed bugs are found, all adjacent units must be inspected as soon as possible, and the landlord must provide written notice of the outcome of the inspection to the tenant(s) within two business days (CRS 38-12-1003). If bed bugs are found, remediation efforts must begin within five business days. A tenant may not unreasonably deny access by the landlord, an inspector or pest control agent and the tenant may waive the right to advanced notice. The tenant should be provided guidelines to prepare the unit for treatment and must properly prepare the unit for inspection and treatment. If a tenant unreasonably denies access or fails to prepare the unit for inspection or treatment, they will be liable for the costs associated with subsequent inspections or treatments. The tenant must not dispose of personal property containing bed bugs in any common areas. A landlord is required to bear the initial cost of inspection by a qualified inspector and treatment by a pest control agent. A pest control agent is defined as “a certified operator, commercial operator, qualified supervisor, or technician.” A landlord is not required to provide alternative lodging to a tenant or pay to replace a tenant’s personal property (CRS 38-12-1004 (6)(a)). Tenants should check with their renter’s insurance company to see if these expenses may be covered.

PRIVACY AND THE RIGHT OF QUIET ENJOYMENT

Privacy

The tenant has a right to privacy. Unless the lease specifically allows it, the landlord does not have the right to inspect, do repair work, or show the premises without reasonable notice except in an emergency. While not required by statute, reasonable notice by the landlord for access to the rental property should be addressed in the lease for the privacy and convenience of the tenant. 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 or to show the property to prospective new tenants. What is considered “reasonable” may be determined by the parties and written into the lease before it is signed. A commonly accepted time frame is 24 hours, except when a landlord is inspecting for compliance with the lease such as unauthorized animals or drug use.

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 tenant believes that the landlord is interfering with his or her right to privacy, the tenant should try to resolve the problem by negotiating an agreement with the landlord regarding entry, including reasons, times, and amount of advance notice requested.

This negotiation may start with a clear letter identifying the problem. If an agreement cannot be reached, the advice of an attorney should be sought, or mediation can be requested through CMRC.

Before a tenant denies entry to a landlord for any reason, an attorney should be consulted. Refusal to allow access to the landlord as required by the lease may be grounds for eviction action.

Covenant of Quiet Enjoyment

The tenant has a right to use the property for the purpose for which it was leased. Colorado law protects residential tenants from conditions in the property caused by the landlord that may not violate the Property Maintenance Code or Warranty of Habitability,but still make it difficult to live in the premises. For example, a landlord who conducts loud construction in an adjoining unit which interferes with a tenant's ability to fully enjoy their unit may be in breach of the covenant of quiet enjoyment. In these situations, the tenant should notify the landlord of the problem in writing. If the landlord does not correct the conditions within a reasonable period, the tenant may have legal remedies. However, certain catastrophic events caused by natural forces or situations involving third persons may be beyond the control of the Landlord.

LANDLORD'S REMEDIES FOR LATE PAYMENTS

Fees for Late Payment of Rent

If specified within the lease agreement, late fees may be assessed by landlords when rent is past due. The lease must state when rent is due and when rent is late.

A landlord may not:

- Charge a late fee unless a rent payment is late by at least 7 calendar days.
- Charge a late fee of more than $50 or 5% of the amount of the past due rent payment, whichever is greater.
- Impose a late fee more than once for each late payment (CRS §38-2-105). For example, daily late fees may not be charged once the maximum amount of $50 or 5% is reached.

- Charge interest on a late fee during the tenancy.
- Evict a tenant for the non-payment of a late fee.
- Recoup any amount of a late fee from a rent payment.

A landlord must provide the tenant written notice of the late fee within 180 days after the date upon which the rent payment was due. (CRS 38-12-105).

Landlord Liens

In certain situations, a landlord may be granted a lien on some items of a tenant's personal property for past due rent (CRS §38-20-101), (CRS §§38-20-107 through 116). A lien is a legal right to another person's belongings. The landlord should always seek legal advice from an attorney before taking such action because the landlord could be liable to the tenant for damages if a lien is improperly exercised.

Certain property cannot be seized in a landlord lien. This includes small kitchen appliances, cooking utensils, beds, bedding, necessary wearing apparel, personal or business records and documents and personal effects of the tenant and household members (CRS §38-20-102(3)(a)).

If property has been seized, the landlord and tenant should both document, in writing, what property was taken, as well as keep all correspondence and notices. Tenants may consult an attorney if they are involved in the exercise of a landlord lien and want to reclaim their property. The lien procedure is complicated and even if done correctly, may not be cost effective.

Collection Agency

Some landlords choose to turn matters of money collection over to a collection law firm or a collection agency.The law firm or collection agency will attempt to recover the debt and/or seek a court judgment on behalf of the landlord. Such action can negatively impact a tenant's credit report. Tenants should also be aware that landlords may report money damages to credit reporting agencies without sending them to a collection law firm or collection agency.

DISCRIMINATION PROTECTIONS

A landlord may not discriminate against a tenant on the basis of "race, creed, color, sex, sexual orientation, gender identity, gender expression, genetic characteristics, marital

status, religion, religious expression, national origin, ancestry, pregnancy, parenthood, custody of a minor child, mental or physical disability, source of income, family status, or immigration status, unless otherwise required by law" of the individual or such individual's friends or associates (BRC §12-1-2). State and federal protections also exist. The Colorado CROWN Act prohibits discrimination in housing and other arenas on the basis of hair texture, hair type, or hairstyles commonly or historically associated with race, such as braids, locks, twists, tight coils or curls, cornrows, Bantu knots, Afros, and headwraps (CRS §24-34-502 and HB20-1048).

The City of Boulder considers it discriminatory to charge different rents or deposits, require different lengths of leases, establish different lease conditions, use different screening criteria, and deny potential tenants on the basis of the categories listed above (BRC §12-1-2). Students are not considered a protected class.

Examples of discrimination could include:

- Denying a prospective tenant, on the basis of their status within a protected class, the opportunity to see, rent, or buy an apartment or home, yet making it available to other prospective tenants
- 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
- Advertising discriminatory preferences
- Harassing or threatening someone on the basis of their protected class
- Not allowing a person using a wheelchair to build a ramp (subject to appliable law)
- Not allowing a service animal in a "no pets" building (this includes animals prescribed for emotional/psychological assistance)
- Not allowing a reserved parking space for a person with a disability because the housing does not give reserved spaces

Exceptions

Boulder's anti-discrimination ordinance includes certain specific exceptions for situations such as when an owner or lessee rents out part of a single dwelling unit that the owner or lessee also occupies. 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 certain circumstances. It is not considered a discriminatory practice if

the owner publicly establishes and implements a policy of renting or selling exclusively to persons fifty-five years of age or older. It is also not considered discrimination under local laws if children are excluded from any residential building that has a covenant limiting or prohibiting minor children, as long as that deed restriction was in effect as of November 17, 1981 and remains in effect. These exceptions can be found in BRC12-1-2(b). An attorney should be consulted to ensure compliance with state or federal law.

For more information, or if you believe that you have been or are being discriminated against within the city of Boulder, contact the City of Boulder Office of Human Rights, at 303-441-3141 or visit the OHR webpage.

Source of Income Discrimination

In 2018, Boulder City Council adopted an ordinance which makes it illegal in Boulder to discriminate against individuals based on their source of income or the source of income of their friends or associates. Source of income means any verifiable money, compensation or housing assistance that is lawful in the State of Colorado and paid toor on behalf of a renter or buyer including but not limited to: child support, disability benefit, housing voucher, rent subsidy or other public assistance. The state also has a law prohibiting discrimination based on source of income. However, a landlord is permitted to require “Proof of income” to confirm the identity of an applicant, to perform proper credit and criminal screening, and confirm that a prospective tenant’s income is double the monthly rent amount. For Section 8 Voucher holders this would mean double the amount of the applicant’s portion of the rent.

Examples of Potential Source of Income Discrimination
These behaviors, policies, or practices, among others, could be evidence of source of income discrimination:

- An advertisement for an apartment includes the phrase, “Section 8 need not apply”
- A landlord says they will not renew your lease because you pay rent using money you received through child support
- A property manager makes timely repairs when those repairs are requested by tenants that pay market rate rent but refuses to make repairs when those repairs arerequested by tenants that pay a subsidized rate
- A property manager refuses to consider the value of a housing voucher in calculating someone’s income

Lawful Applicant Screening

- A landlord cannot ask for any proof or documentation regarding an applicant's *source of income*. A landlord, however, may ask for and consider pay stubs, tax returns, bank account statements, or similar types of verification of the *amount of income.*

The ordinance does not prohibit a landlord from making a decision about a rental application based on many standard screening criteria such as credit reports, personal references and criminal history within the guidelines set forth above in the section entitled Credit and Criminal Background Checks. A landlord may reject a rental application by a voucher-holder if the reason for the rejection is not related to the applicant's source of income or membership in any other protected class.

More information for landlords about Housing Choice Vouchers is available in this FAQ.

Disability Discrimination

According to Federal Law and Colorado law, actions considered to be discriminatory against persons with disabilities/handicaps include but are not limited to:

1. Refusing to allow a person with a disability to make a reasonable 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."

Federal Law also prohibits the design or construction of new multifamily buildings after March 13, 1991 which do not have required accessibility features, as enumerated in the Act. (42 USC §3604(f)(3)(C)).

In some cases, a landlord may decide to grant permission for a modification if the tenant agrees to restore the interior to its prior condition. The landlord may also require money to pay for restoration to be kept in an interest-bearing escrow account if the modifications are substantial.

Service Animals and Emotional Support Animals

With a few limited exceptions, a landlord is subject to the Fair Housing Act (FHA), Section 504 of the Rehabilitation Act of 1973 (if the project is federally subsidized),

and/or the Americanswith Disabilities Act (ADA) (for areas open to the public such as leasing offices). Under the FHA, a disability is a physical or mental impairment that substantially limits one or more major life activities. Landlords must be aware of their obligations under these laws. These obligations include granting a request for a reasonable accommodation with respect to assistance animals. A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have equal opportunity to use and enjoy a dwelling, including public and common use spaces. A request for an exception to a “no pets” policy by a person with an assistance animal would be an example of a request for a reasonable accommodation.

There are two types of assistance animals—service animals and support animals. A service animal is usually a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. With few exceptions, other species of animals, whether wild or domestic, trained, or untrained, are generally not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. A support animal is a trained or untrained animal that does work, performs tasks, provides assistance, and/or provides therapeutic emotional support for an individual with disabilities.

An animal that does not qualify as an assistance animal is a pet for purposes of the FHA and may be treated as a pet for purposes of the lease and the landlord’s rules and policies. A housing provider may prohibit pets or charge a pet fee, pet rent, and/or extra security deposit for pets at its discretion. A housing provider may not charge a pet fee or additional security deposit or rent for an assistance animal (FHEO Notice FHEO-2020-01).

Considerations about Assistance Animals

- Landlords subject to ADA rules are limited in the questions they can ask tenants who are requesting to use assistance animals. In the housing context, housing covered by the ADA includes public housing agencies, state and local government-provided housing, shelters, some types of multifamily housing, assisted living facilities, housing at places of public education and other public accommodations (FHEO Notice: FHEO-2020-01 Issued January 28, 2020). Landlords for whom the ADA does not apply may ask individuals who have disabilities that are not readily apparent to the landlord to answer certain questions about service dogs, or if not a service dog, to submit reliable documentation of a disability and their disability-related need for an assistance animal from a physician, psychiatrist, social worker, or other mental health

professional. Assistance animal certificationor registration downloaded from a website for a fee may not be adequate documentation.

- Landlords may not charge a pet deposit for an approved assistance animal, but they may charge the same fees and deposits for cleaning and damage that they would charge other tenants. The standard security deposit may be used for any damage caused by the assistance animal.
- Assistance animals are not exempt from local animal control or public health requirements.
- Assistance animals are not required to be visibly identified.
- Service animals are usually dogs, but under some circumstances, federal law allows for other types of animals to be service animals as well.
- Emotional support animals are most commonly dogs or cats but may be other species of domesticated animals such as birds, rabbits, hamsters, gerbils, fish, and turtles. In the case of unique or non-domesticated animals not typically kept in household situations, additional substantial supporting documentation may be required by the landlord for review (see "Exceptions to Providing a Reasonable Accommodation" below). Parties should consult with an attorney for help navigating unusual situations and to make sure they are following the law.

Exceptions to Providing a Reasonable Accommodation

A landlord may not need to provide a reasonable accommodation related to an assistance animal if:

- Doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider's services.
- The specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or
- The specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation (FHEO Notice: FHEO-2020-01).

A request for a reasonable accommodation may not be unreasonably denied and a response may not be unreasonably delayed. Landlords must offer to engage in an interactive process to explore all viable options with the requestor before any denial is considered. Sample forms for independent verifiers to complete are also encouraged,

when the existence of a disability or need for the emotional support animal is not obvious. Landlords and tenants should seek legal counsel or call the City of Boulder Office of Human Rights at 303-441-3141 for any additional questions regarding matters of discrimination.

SALES AND FORECLOSURES

Sale of Rental Property

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 pay 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 (CRS §38-12-103(4)):

- Transfer the security deposit to the new owner/landlord and notify the tenant by mail that this transfer has been made. It is helpful to also transfer to the new owner any documentation of the condition of the property when the tenant moved in, such as a check-in sheet; or
- Return the security deposit to the tenant per the terms of the lease, less any legitimate deductions. To protect themselves from possible damages and to avoid a security deposit dispute in the future, it is wise for the new owner to collect a new security deposit and re-assess the condition of the property at that time.

Foreclosure of Rental Property

The State of Colorado provides no guarantees of tenancy to renters living in a foreclosed property when foreclosure occurs during the lease term. Tenants may beable to negotiate with the new owner to remain in the property if they so wish. Any agreement should be put in writing and signed by all parties.

TERMINATION OF THE LEASE

Termination of a Fixed Term Lease

A term lease, also known as a definite term lease, has a defined end date. The lease expires on the specified date and the tenant must leave the rental on that date. Neither the landlord nor tenant need to give notice of termination for a term lease unless the lease requires such notice. A common practice, however, is to include a clause requiring 30 days' notice before the date of termination, (for the landlord, tenant, or both), to state in writing whether they will or will not be renewing the lease. If no notice is given and the tenant stays with the landlord's consent, the lease automatically becomes a month-to-month lease. In Colorado, a landlord is not required to renew a lease nor to provide a reason for non-renewal of a lease.

Termination of a 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 written notice that is signed by the party terminating the lease and that states the date the tenancy will end. This notice may be posted in the mail or hand-delivered to the other party. If no notice requirement is specified in the lease, the default notice period is 21 days from the end of the current rental period (CRS §13-40-107). The day the notice is given does not count as part of the 21 days. This 21-day notification period may be changed to a longer time if the parties have written it into the lease -- a 30-day notice is a common modification.

Example of Proper Termination of a Month-to-Month Lease with Default 21 Day Notice

The tenants are on a month-to-month lease at House A. Their lease says nothing about how the lease will be terminated. The tenants have paid rent for the month of June on June 1. June is the current rental month. The tenants decide they will be moving to House B on July 1 and will be terminating their lease at House A. Since the lease doesn't specify a notice requirement, the default minimum notice required by law is 21 days from the end of the current rental month. Counting back 21 days from the last day of the current rental month, which is June 30, lands on June 10. However, the day of notification does not count in the 21-day total, so June 9 is the last day the tenants could give proper notice that they are terminating the lease. On June 9, the tenants hand the

landlord a written document signed by the tenants stating they will be moving out on June 30. These tenants have properly terminated their lease. The tenants could have given the landlord notice before June 9 ifthey wanted to. However, if notice of termination were provided after June 9, a new rental month would begin on July 1 and the tenants would be obligated to pay for the month of July. If the landlord wanted to terminate the lease, they would follow the same timeline to properly notify their tenants of the lease termination but could post the notice on the property (CRS 13-40-108).

Early Move-Out (or Early Termination of the Lease)

Early move-out, (or early termination of the lease), is one of the most common sources of contention between landlords and tenants. Before signing a lease both, parties should make sure they are clear about expectations and responsibilities in this matter.

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 a different agreement with the landlord. A landlord, however, 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 conducting background checks; many leases include a clause to that effect. A lease contract may also specify that the tenant, rather than the landlord, is responsible for finding a new tenant, though, if the early termination results in a lawsuit, a court may still find that a landlord should have taken reasonable action to find a replacement tenant. It is important to check the lease to see who is responsible for re-renting the unit, and what criteria should be used to approve prospective new tenants.

If the landlord must accept a lower rental amount in order to rent the property, the original tenant may be responsible for the difference between the old and new rent. However, if deferred maintenance or condition issues present a barrier to re-rental, landlords shouldtake into consideration whether the rent should be lowered to attract a replacement tenant. The courts may also consider whether the amount of rent demanded by a landlord was reasonable considering any deferred maintenance issues and other factors.

Only in extreme conditions of uninhabitability may a tenant vacate the premises and stop paying rent. Move-out before the end of the lease term due to the condition of the premises, privacy matters, or violation of the right to quiet enjoyment (see pg. 12) are complicated under Colorado law and the advice of an attorney should be sought inthese situations.

Domestic Violence Protection

A victim of unlawful sexual behavior, stalking, domestic violence or domestic abuse may terminate a lease without penalty by providing the landlord with evidence of the domestic abuse or the threat of domestic abuse, in the form of a police report issued within the prior 60 days, a protection order issued by a court, or a written statement from a medical professional (except in cases of stalking) or application assistant (§CRS 24-30-2103 and CRS §38-12-401) who has examined or consulted with the victim and confirms the abuse. Victims may vacate the premises and can only be held responsible for one month's rent following the month of their departure, payable to the landlord within 90 days after the victim leaves the premises (CRS §38-12-402).

The same statute prohibits the landlord from terminating a rental agreement or imposing penalties on domestic abuse victims who call the police. As defined by law, the relationship between the perpetrator and the victim need not be intimate; a roommate can be the victim of domestic abuse or stalking by a fellow roommate.

If a victim terminates a lease because of this type of abuse, the landlord cannot disclose that information to others, except as required by law to do so. The landlord cannot disclose the tenant's new address (CRS §38-12-402(4)).
The Federal Violence Against Women Act (VAWA) also provides protection to survivors of domestic violence and is a bar to evicting the survivor.

Active Military Duty

The Servicemembers Civil Relief Act (50 USC §3955), allows members of the military and their dependents to terminate a lease or suspend (stay) eviction proceedings against them if they join the military, are called up for active duty, are relocated to another duty station, and/or are deployed after signing and during the term of the lease.

The service member must provide written notice of termination to the landlord, along with a copy of his or her military orders or a letter from a commanding officer. If a service member pays rent on a monthly basis, once he or she gives proper notice and a copy of the military orders (change of station orders), then the lease will terminate thirty (30) days after the next rent payment is due.

For example, if the termination notice is delivered on July 10, and the next rent is due Aug. 1, the service member shall pay the August rent in full. The effective date of the lease termination will be Aug. 31. Any rent the service member has paid in advance must be refunded to the service member within 30 days of the effective date of the lease

termination.

The act prevents a landlord from evicting a service member or their dependents during a period of military service without a court order, provided that the premises are occupied primarily as a residence and the monthly rent does not exceed $2,400 after the statutory housing price inflation adjustment calculation (50 USC §3951).

A landlord who knowingly attempts or knowingly takes part in an eviction prohibited by this statute may be found guilty of a misdemeanor. If you are a service member, or are seeking to evict a service member, you should consult with an attorney to understand the rights of all involved.

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 and assignments are not the same thing, but the words are often used interchangeably, causing confusion.

Sublease

A sublease is a secondary lease between the original tenant and a new tenant, where the new tenant pays the rent directly to the original tenant and the original tenant continues to pay rent directly to the landlord. 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 original tenant may require a walk-through, check-in/out sheet and a security deposit from the new tenant. The rental term of a sublease is often shorter than the original lease term. For example, a tenant with a lease term of one year, from January through December, might sublease the apartment for June through August, while out of town, but then return to complete the lease term from September through December.

Assignment

An assignment of the lease transfers the original tenant's right to possession of the rental property tothe new tenant. In an assignment, the new tenant assumes all responsibility for payment of rent directly to the landlord. The original tenant may still

have other obligations unless they are fully released from the contract by the landlord. Assignments must usually be negotiated among the original tenant, the new tenant, and the landlord.

Release

A release is an agreement between the landlord and the original tenant that ends their lease contract and may have additional requirements.

SECURITY DEPOSIT

The security deposit, also called the damage 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 (CRS §§38-12-101 through 104). The courts have determined that security deposits cannot be used by the tenant as advance payments of rent. However, if a tenant fails to pay rent, a landlord may retain the security deposit to cover their loss (CRS §38-12-103(1)) and may sue the tenant for property damages or unpaid amounts due under the lease if those amounts exceed the security deposit amount.

It is generally the landlord's discretion whether or not to repair damages for which they have charged the tenant, except where the damage is to an appliance or infrastructure required by the Boulder Revised Code.

Return of Security Deposit

If the tenant has fulfilled all the terms of the lease (including giving the landlord proper notice, if required), has paid the rent in full and on time, has left no financial obligation to the landlord, and has caused no damage beyond ordinary wear and tear, the tenant is entitled to a full return of the security deposit (CRS §38-12-103). The tenant should collect the security deposit in person or leave a forwarding address with the landlord so that the landlord can return the deposit. If a forwarding address is not provided, the landlord must mail the payment to the tenant's last known address, which may be the landlord's own property. A courtesy copy may also be emailed, but this does not replace the mailing requirement. The tenant is encouraged to submit their forwarding address to the post office so that, in this scenario, the deposit statement and balance will be forwarded to them.

Colorado law requires that the landlord return the security deposit or send a written itemized statement of the deductions and the balance of the deposit, if any, to the tenant within one month after the termination of the tenancy (CRS §38-12-103(1)). This time period may be extended up to 60 days if written in the lease (CRS §38-12-103(1)). The itemized statement of deductions must set forth the exact reasons for the retention of those portions of the deposit. The failure of a landlord to provide a written statement within the specified period of time results in forfeiture of landlord's right to withhold any portion of the security deposit. However, such failure does not result in a landlord forfeiting their right to sue for damages.

What is Normal Wear and Tear?

Normal wear and tear, as defined by law, means that 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 or chattels [items of personal property] by the tenant or members of their household, or their invitees or guests (CRS §38-12-102 (1)). This means that through ordinary and appropriate use, some deterioration of the home and finishes within the home is to be expected. Damage that occurs for other reasons is not considered normal wear and tear. If the tenant has caused damage, they should communicate with the landlord prior to attempting to make repairs that may not meet the landlord's standards.

An example of normal wear and tear includes worn areas on the carpet from being walked upon. Normal wear and tear does not include stains on the carpet, nail holes in the walls, and mildew on grout.

Reasons to Withhold Money from a Security Deposit

- Damages beyond normal wear and tear
- Unpaid utility bills
- Past due rent or late fees
- Cleaning not done that the tenant agreed to in the lease
- Cleaning necessary to return the property to the condition it was in when the tenant moved in, less normal wear and tear
- Any cleaning specified in the lease as standard upon moveout, such as professional cleaning of carpets
- Any other breach of the lease causing financial damage to the landlord

If a Tenant Signs a Lease but Vacates Early or Never Moves In

The landlord may apply the security deposit to the unpaid rent for the remainder of the lease term until the unit has been re-rented. The landlord is required to make a reasonable effort to re-rent the property and cannot collect multiple rents from multiple parties for the same period of time (see pg. 29).

Return of Deposit with Multiple Tenants

It is helpful for the lease to specify how a deposit paid by several tenants will be returned. If the tenants have paid a single deposit to the landlord, they should agree in advance how the security deposit or its remaining balance is to be disbursed. A signed agreement to this effect should be presented to the landlord. Samples of roommate agreements are available on the City of Boulder website. If not otherwise specified, a landlord is permitted to make any refund check payable to all the tenants.

Determining Deductions for Damage

Work estimates from repairpersons for labor and/or materials can help landlords calculate appropriate deductions. However, landlords should be aware that in mostsituations, they may not be permitted to charge full replacement value for items that were damaged. Landlords may calculate the depreciated value of damaged property if the calculations are made in good faith and are reasonable when looking at the totality of the circumstances. Depreciated value takes into consideration the original cost, expected life span, and current age of the components.

Recourse for Withheld Security Deposit

If the landlord does not return the full security deposit within 30 days (or not more than 60 days as specified in the lease) or does not send an itemized list of deductions along with the remaining balance, (if any), within the required time period, the landlord forfeits the right to deduct any amount from the security deposit. (CRS §38-12-103(2)); *Mishkin Young,* 107 P.3d 393 (Colo. 2005). Forfeiting this right does not prevent the landlordfrom later suing the tenant for damages, however.

Negotiation

If a tenant believes that the landlord has withheld for damages for which the tenant was not responsible or that the damages that were deducted were excessive or should be considered ordinary wear and tear, the tenant may first consider resolving the dispute through negotiation. Providing the landlord with documentation, such as photographs and repair estimates, will help substantiate the tenant's position and may convince the landlord to return some, or all, of the disputed amount. Requesting a deadline for response is helpful so the tenant may decide when to take the next step if the outcome of the negotiation is unacceptable to them. If self-negotiation does not resolve the dispute, tenants and landlords often find that having the conversation in a mediation setting where they may clearly hear each other's perspective and share documentation to be more productive.

Seven Day Demand Letter

A Seven Day Demand Letter is a specific document in which the tenant asks for the return of the damage deposit that was withheld (or asks for the full amount if no accounting was received in the time frame specified in the lease), and states that if the landlord does not comply within seven days, the tenant will sue in court for treble damages (three times the withheld amount). The seven-day time period includes weekends. The letter should state:

- The address of the rental premises
- The dates of the tenant's occupancy
- The amount of the security deposit originally paid
- The tenant's current mailing address
- (and if applicable) A statement by the tenant explaining any disagreement with the charges withheld from the deposit

The letter should be sent by Certified Mail, Return Receipt Requested or by some other method that can be verified and tracked. The tenant may also send a duplicate copy via regular mail and/or by email. The tenant should keep a copy of the letter and the Certified Mail receipt. If the landlord returns the deposit in full or pays the tenant the disputed portion of the deposit within seven days of the landlord's receipt of theletter, the tenant may not sue for treble damages. A template for the Seven Day Demand Letter is available on the city website.

Court

If the landlord does not return the deposit within the seven days, the tenant may sue the landlord to obtain the return of the security deposit plus three times the amount of the

deposit that was wrongfully withheld and the tenant's reasonable attorney fees and court costs (CRS §38-12-103(3)). In court, the landlord bears the burden of proving that the withholding was not wrongful (CRS §38-12-103(3))but may counterclaim against the tenant for any damages caused by the tenant or any of the charges they could have otherwise deducted from the damage deposit, or any other financial obligation owed by the tenant such as utilities or unpaid rent.

Under some leases, the losing party in a court action is responsible to pay attorney fees and court costs to the winning party.

Tenants who feel they have a claim should be aware of the statute of limitations that applies to their situation. Failing to pursue a claim within the statute of limitations could cause them to permanently lose their right to pursue their claim.

Mediation

For properties within the city or county of Boulder (excluding the city of Longmont), contact CMRC at 303-441-4364 to request mediation without resorting to court. Mediation is often faster, less stressful, and less costly than going to court. Trained, neutral mediators will help facilitate a negotiation process that often results in agreements which both parties feel are reasonable and fair and that can be tailored to meet the needs of the individuals involved.

Interest on Security Deposit

Under Boulder Revised Code §12-2-5, the security deposit remains the sole property of the tenant. A duty exists for the custodian of the security deposit, (i.e., the landlord), to account for interest at the end of the lease. Interest must be paid on the entire amount of all security deposits for residential property in Boulder and is calculated as simple interest.

Interest must be paid within one month (up to 60 days if stated in the lease) after the termination of the lease, or after the tenant moves out, whichever occurs last. A landlord may withhold the payment of interest only for those reasons permitted under Colorado Revised Statute §38-12-103 for retention of a security deposit. For example, unpaid rent or utilities, reasonable charges for cleaning that the tenant did not perform, payment for damages beyond normal wear and tear, or any other breach of the lease causing financial damage to the landlord may be a reason to justify withholding of interest on the security deposit.

Waivers of the provisions of the ordinance are not permitted. Tenants may recover treble damages or $100.00, whichever is greater, plus attorney fees and court costs, if the interest is willfully and wrongfully retained (BRC §12-2-6(c)). The tenant must give the landlord at least seven days written notice before filing legal action (BRC §12-2- 6(c)).

Determining Interest Rates on Security Deposits

How to determine interest rates is covered by Boulder Revised Code §12-2-7. The interest rate to be paid upon the refund of security deposits shall be determined by the city manager by averaging the interest rates being paid on one-year certificates of deposit by three banks doing business within the city of Boulder. This average interest rate will be adjusted annually, calculated as of Dec.15 of each year. The rate shall be published in a newspaper of general circulation or posted on a city internet site that is accessible to members of the public. Interest rate information and a calculation formula are available on the city website.

EVICTION AND EVICTION PREVENTION

The legal term for eviction is “Forcible Entry and Unlawful Detainer” (FED). Eviction occurs when the court enters an order for the tenant to vacate the property. This court order is enforceable only by the sheriff and allows the sheriff to remove the tenant and monitor the removal of the tenant’s property from the premises, if necessary. A landlord may evict one of multiple tenants on the same lease. Only a landlord may evict a tenant, no tenant can evict any other tenant. However, a tenant may be able to evict his or her subtenant. Eviction laws related to manufactured housing communities (mobile home parks) are different from those related to other types of housing. A separate guide with information on manufactured homes is available.

Tenants should be motivated to avoid an eviction and its potentially devastating consequences. The City of Boulder Eviction Prevention and Rental Assistance Services program (EPRAS) helps people, including residents of manufactured housing communities, resolve eviction-related housing issues through legal services, rental assistance (in some circumstances and for City of Boulder residents only) and mediation. If you live in Boulder County and are facing a potential eviction you may also contact EPRAS at 303-441-3414 or submit a request for services.

Eviction Without a Court Order

It is not legal for a landlord to evict a tenant without a court order except in rare occasions (such as cleanup of a drug lab, mutual consent of the tenant, or provable

abandonment (CRS § 38-12-510). This means that landlords are not allowed to change the locks on the property, terminate vital services such as heat or water, or remove a tenant's possessions from the property without first going through the proper legal procedure (see pg. 42 for more information on tenant's possessions).

In the Event of a Lockout Without a Court Order

If a tenant is locked out, they may not force their way back into the premises. The tenant should call the police or sheriff and provide a copy of their lease to the responding officer. If the officer is satisfied the tenant has a right to be there, they may require the landlord to allow the tenant back into the property. The tenant should talk to an attorney for further guidance.

Eviction Process

Tenant Has Not Paid Rent or Has Broken a Condition of the Lease

In the majority of situations, before filing a suit to evict a tenant for nonpayment of rent, or for most lease violations, (see section below for repeated or substantial lease violations), the landlord must give the tenant a written and signed "Ten Day Demand For Compliance Or Right to Possession" notice. This notice gives the tenant the choice of either paying the past due rent, remedying the lease violation, or moving out within the time period stated in the demand. Different notice periods as well as other rules apply in certain situations, such as for HUD properties or mobile home park communities, and an attorney should be consulted for guidance when executing a notice in these situations.

The landlord can serve the tenant the demand by delivering a copy to the tenant, posting the notice in a conspicuous place on the premises, or by leaving a copy with a resident in the household who is over the age of 15 (CRS §13-40-108). Certain exceptions apply for HUD properties.

When calculating the ten-day time period in the "Ten Day Demand for Compliance or Right to Possession," the first day when the posting is made does not count. Therefore, the ten-day time period begins the day following service or the posting of the notice. For example, if the demand is posted on October 10, day one of the ten-day period is October 11. The time begins running regardless of when the tenant discovers the posting. Also, the time continues to run regardless of whether it is a Saturday, Sunday, or holiday. However, if the tenth day falls on a weekend or holiday, the next business day for the court is then considered the tenth day.

If proper notice has been given and the tenant still does not pay the rent, remedy the lease violation, or move out within the required time period, the landlord may file an eviction suit in either the Boulder County Court or the 20th Judicial District, both of which are located at the Boulder County Justice Center. Forms and detailed eviction instructions can be found at the Colorado Judicial Branch website.

The tenant's right to a written notice prior to eviction for nonpayment of rent cannot be taken away or waived by any language in the lease. However, no notice is required when the lease ends on a specific date or where the tenant has given notice of intent to vacate by a specific date.

Tenant Has Repeatedly or "Substantially" Violated the Lease

A landlord may terminate a tenancy by posting or delivering a ten-day Notice to Quit under certain conditions involving repeated violations for which a ten-day notice has been previously given (CRS §13-40-104(I)(e.5)). A substantial lease violation is a specific type of lease violation that falls into one of three acts occurring in or around the premises including "parking lot, hallways, common areas, or other area in the same complex leased by the resident." They are either a single or repeated act by the tenant or their guests that 1) physically endangers another tenant or their guests or their property, 2) a violent or drug related felony prohibited under articles 3, 4, 7, 9, 10, 12, or 18 of title 18 of Colorado Revised Statutes, or 3) a criminal act in violation of federal or state law or local ordinance that carries a sentence of 180 days or more and is a public nuisance under state law or local ordinance based on state statute. The landlord may terminate a tenancy by posting or serving a three-day Notice to Quit (CRS §13-40-107.5). Under either of these circumstances, a tenant does not have an opportunity to "cure" the problem; the tenancy is terminated for the reason(s) stated on the Notice to Quit. If the tenant does not vacate the property, an eviction may be filed with the court. A tenant should seek legal advice to determine if circumstances warrant this action.

A survivor of domestic violence or abuse is generally not subject to eviction under this provision (see pg. 30). However, domestic violence is not a defense to nonpayment of rent.

Tenant Response to a Ten-Day Demand Notice

If the proper ten day written notice has been given to the tenant, the tenant should immediately contact the landlord, Eviction Prevention and Rental Assistance Services and/or private legal counsel to attempt to resolve the issues. This could involve paying the rent that is owed, seeking rental assistance, negotiating a payment plan (if the landlord is willing), negotiating a timetable for moveout (if the landlord is willing), or

remedying the lease violation (such as noise, pets,repeated late payments, guests, etc.). If the situation has not been resolved and the tenant has elected not to vacate the premises within the ten days specified period, the landlord may file an eviction suit under a specific procedure set forth by the Colorado state statute titled "Forcible Entry and Detainer" (FED) (CRS §13-40-101 *et seq*.).

Service for the Court Summons and Court Jurisdiction

If the issues between the landlord and tenant are not resolved, the landlord may file an eviction lawsuit, or FED action, to attempt to evict the tenant or tenants from the property. Eviction filing and the service of the summons to the tenants can be complicated and a landlord may want to consult with an attorney before proceeding. The rules regarding proper service can be found in CRS §13-40-112, and CRCP Rule 304 (for eviction suits filed in CountyCourt), or CRCP 4 (for eviction suits filed in District Court). The methods of service will determine what outcomes may or may not be allowed in court. Improper service will delay the eviction hearing and may result in dismissal of the complaint. More information regarding the eviction process can be found on the State of Colorado Judicial Branch website or may be obtained from the clerk of the court at the Boulder County Justice Center.

Tenant Response to a Service of Process (Court Summons) for Eviction

The tenant must make every effort to appear in court on the date specified on the summons in order to avoid an eviction. If the tenant fails to appear in court on the hearing date, the court will enter a judgment for possession of the property in favor of the landlord by default, effective at the close of business on the court date. This means the tenant will have to move out (see timeline for moveout below in "*After Court"*), and the eviction would be a matter of public record and would appear on a background check. Tenants who come to court will typically be given an opportunity to talk to an attorney who may then provide legal representation. The tenant may request to mediate with the landlord or the landlord's representative. Common outcomes of negotiation or mediation include a payment plan, a move out plan, or other arrangements agreeable to all parties. In an eviction based solely on nonpayment, if a tenant pays all the amounts owed as stated on the demand plus any subsequently accrued rent to the Landlord (or the court) before judgment for possession enters, a landlord must accept the money and dismiss the eviction case. It is important that the landlord include all money due as of the date of service of the demand, plus the amounts that will become due through the day of court so that the tenant and the court clerk understand the amount needed to bring the tenant current. (CRS 13-40-15 (4)). A landlord may not evict for unpaid late fees alone.

In the event the landlord and tenant cannot resolve the issues through negotiation or mediation, they will return to the courtroom to go before the judge who will potentially set the case for trial.

Defense to Eviction, Filing an Answer, and Going to Trial

If all other efforts to resolve the dispute have failed and the tenant believes they have a valid defense to the eviction the tenant may request a trial. Non-payment of rent for reasons such as loss of job, illness, or substandard conditions in the property are very rarely a legal defense against eviction. To request a trial, the tenant must "File an Answer" with the court stating the reasons why they dispute the eviction. Typically, the answer will be reviewed by the judge to evaluate whether it presents a valid legal defense. If the answer is accepted, the court will set a trial date, usually within 7-10 days of the filing of the answer. Legal services may be available to help tenants draft an answer. There is a fee to file an answer, but tenants who cannot afford the fee may submit a form to the court clerks to request the fee be waived. At the trial, the landlord and the tenant will have the opportunity to present their cases, including any documentation, such as the lease contract, financial statements, and photographs, to the court. The judge will make a ruling which party has the right to possession of the property.

Suppression of Eviction Court Records

Colorado state law (CRS 13-40-110.5) requires courts to suppress records of eviction cases upon filing and while they are moving through the court process. The purpose of the law is to ensure that an eviction filing does not present a barrier to the tenant's future housing. Prior to the law going into effect, eviction filings, regardless of the outcome of the case, automatically created court records which could then be acquired by third-party screening companies to produce tenant reports for prospective landlords. Now, an eviction will remain suppressed if the case is dismissed or vacated. Only cases which result in an eviction ruling may appear on a background check. Even in cases where an eviction judgement is entered against the tenant, the landlord may still opt to suppress the judgment, so it won't appear on the tenant's record.

After Court: Procedures if the Landlord is Granted a Judgment for Possession

If the landlord has gone through the proper procedure and obtained a judgment for possession, then an order to the sheriff (known as a "Writ of Restitution") to evict the tenant is issued. The time frame for the writ to be issued varies but is generally 48 hours after the judgement for possession is granted. The sheriff may carry out the eviction

order any time after 10 days from the entry of the judgment for possession (CRS §13-40-122). The tenant's personal belongings may be moved outside of the rental property by the landlord or landlord's agent. However, the landlord may also choose to store the property after it is removed, and either sell the property or return it to the tenant after the tenant pays the storage fee.

Legal Fees

By state law, the winning party in an eviction suit may be awarded reasonable attorney's fees and the costs of the lawsuit. However, for either party to assert the right to collect attorneys' fees that right must be specifically stated in the lease.

Continuing Liability for Rent

If a tenant leaves the premises before the end of the lease term in compliance with a landlord's demand to vacate, the tenant may still be responsible under the terms of their lease to pay the rent for the term of the lease or other costs. Colorado courts, however, view an eviction ruling in favor of the landlord as a termination of the lease unless otherwise provided in the lease, and costs owed by tenants may be limited accordingly.

Time Frame for Eviction Process

From the initial posting of a demand notice through recovery of possession, the average eviction can take anywhere from 21 days to three months or more.

MISCELLANEOUS

Abandonment of the Rental Property and Abandoned Belongings

A tenant abandons a property when they vacate the property before the end of the lease term without properly terminating the lease. Most leases specify what is needed for proper termination—see section on Early Move-Out (or Early Termination of the Lease) on page 29.

If a tenant has not properly terminated a lease, a property is considered abandoned as evidenced by the return of keys, the substantial removal of the tenant's personal property, notice by the tenant, or the extended absence of the tenant while rent remains unpaid, any of which would cause a reasonable person to believe the tenant had permanently surrendered possession of the property. In these circumstances the

landlord may assume that the property is abandoned and may retake the property without filing an eviction action (CRE § 38-12-510). Landlords are strongly cautioned that the procedure for doing so is specific and they may wish to consult an attorney to limit their liability in this situation. Tenants affected by unlawful action may bring a civil action to recover damages, costs, and reasonable attorney's fees (CRS § 38-12-510(2)).

If the landlord suspects the property has been abandoned and they are still in communication with the tenant, they should obtain a written document from the tenant verifying the landlord may take possession of the property and relinquishing any remaining belongings to the landlord. Doing so could minimize risks to the landlord of taking unlawful action and/or save them the time and expense of filing an eviction action and will save the tenant the impacts of an eviction suit on their rental history.

If the landlord is unable to obtain written permission from the tenant relinquishing the property and their belongings and the landlord does not want to risk liability by taking action without a court order, they could instead follow the eviction process and obtain a writ of restitution granting them possession of the property and the tenant's remaining belongings.

Zoning, Land Use, and Occupancy

City of Boulder zoning and land use regulations determine the number of people that can legally occupy a unit. Over-occupancy of a unit may result in criminal prosecution of the landlord, the tenant, or both.

Multifamily zones usually allow a maximum of four unrelated people. Single family zones usually allow a maximum of three unrelated people, or a family and two unrelated persons per dwelling unit. In some areas, higher occupancies are grandfathered in.

The owners of rental dwellings in Boulder must inform current and potential tenants about the maximum number of unrelated individuals allowed to live in their units.
To determine the zoning classification of a property or residence, or to learn more about compliance with the notice of occupancy requirements, contact the Planning Department at 303-441-1880 or consult the City of Boulder website.

Rent Increases and Rent Control

If a lease specifies the amount of rent to be paid during the lease term, it cannot be raised during the lease term. However, once the lease has expired, the rent amount may be raised, lowered, or renegotiated. If there is no written lease agreement, the rent may

be increased with 60 day's written notice. (CRS § 38-12-701) However, a landlord may not increase rent more than one time in any twelve-month period of consecutive occupancy by the tenant (CRS § 38-12-701). In the state of Colorado, the amount of rent a landlord can charge is not regulated by law.

Short-Term Rentals

The City of Boulder's short-term rental ordinance allows Boulder homeowners to apply for a license to rent their principal residence or an accessory unit for less than 30 days at a time, (Boulder City Ordinance No. 8154), among other conditions. A tenant with a fixed term or month-to-month lease may not, even with the owner's permission, rent outthe leased unit as a short-term rental. See the City of Boulder website for additional information on short-term rentals.

Homeowners Associations

Homeowners' associations (HOAs) typically govern condominium complexes, townhomes, and some single-family housing developments. If a tenant is renting a property that has an HOA, they are expected to follow the rules established by the HOA.

In a community governed by an HOA, each property owner is a member of the HOA and a board elected by the property owners is responsible for decision-making. Every HOA can be different with respect to the scope of its duties, but one of the primary responsibilities of an HOA is collecting dues from homeowners. These funds typically go toward insurance and maintenance and repairs to the exterior of the property. State law governs how HOAs do business, including setting standards and establishing clear policies for financial reporting, collecting dues, and enforcing rules.

HOAs establish a set of governing documents, sometimes known as bylaws, or codes, covenants, and regulations (CCRs) as well as a collection policy, and renters are expected to abide by these rules in addition to what is required of them in their lease. Governing documents vary from association to association and can include rules that impact a renter such as parking, pets, what items can be stored outside, noise, etc. The HOA, property owner, or property manager should have copies of these documents available for review.

If a CCR rule is violated, the HOA can take action to prevent the violation from continuing, as well as levy fines against the landlord. However, if the tenant is responsible for the violation, the landlord can charge the tenant for any fines as well as potentially bring an eviction suit against the tenant.

For more information consult the State of Colorado Department of Regulatory Agencies (DORA) HOA Information and Resource Center.

BEST PRACTICES AND CONFLICT RESOLUTION

In general, both parties should keep good records, including copies of notes, letters, emails, text messages, and photographs. All agreements, and lease amendments should be specific and detailed and should be put in writing and signed by all parties. Both landlords and tenants should make an effort to communicate clearly and try to understand each other's point of view. Strive to make the landlord-tenant relationship work in a context of what is reasonable, fair and respects the needs of both parties.

If disagreements arise, every effort should be made to negotiate a mutually agreeable settlement. If an agreement is reached it should be put in writing and signed by all parties.

If self-negotiation is not successful, mediation can be the next-best alternative. Mediation is an alternative dispute resolution process in which neutral mediators help the parties communicate effectively, listen to each other's point of view, develop a list of issues to be resolved, and negotiate a settlement that meets both parties' needs. Agreements reached in mediation are written by the mediator and signed by the parties and are legally binding. For more information, contact the Community Mediation Service at 303-441-4364 or submit a request for services using the online form.

RESOURCES

MEDIATION

City of Boulder Community Mediation and Resolution Center
bouldercolorado.gov/community-mediation-and-resolution-center
303-441-4364

Longmont Mediation Service
www.longmontcolorado.gov
303-651-8444

Mediation Association of Colorado
www.coloradomediation.org
303-322-9275

CITY AND COUNTY

City of Boulder Animal Protection
https://bouldercolorado.gov/services/animal-protection
303-441-1874

Boulder Police-Code Enforcement Unit (weeds, trash, snow, noise)
https://bouldercolorado.gov/services/code-enforcement-unit
303-441-3333

Housing Inspection and Rental Licensing
https://bouldercolorado.gov/guide/rental-housing-licensing
303-441-3152

Boulder County Health Department
Indoor Air Quality (Mold, lead, etc.)
https://www.bouldercounty.org/departments/public-health
303-441-1564

City of Boulder Office of Human Rights
https://bouldercolorado.gov/services/human-rights-ordinance
303-441-4197

City of Boulder Planning and Development Services
(Code enforcement of building code & safety, occupancy)
bouldercolorado.gov/government/departments/planning-development-services
303-441-1880

COLORADO

Colorado Department of Public Health and Environment (Mold, bedbugs, indoor air quality)
www.colorado.gov/pacific/cdphe
303-692-2000

Colorado Division of Fair Housing
https://cdola.colorado.gov/fair-housing-resources
303-864-7810

Colorado Civil Rights and Discrimination
ccrd.colorado.gov
303-894-2997

UNIVERSITY OF COLORADO

Student Off Campus Housing and Neighborhood Relations
Also offers legal assistance for housing-related matters
https://www.colorado.edu/offcampus/
303-492-7053

CU Boulder Student Legal Services
(for CU students)
www.cuboulderslsl.com
303-492-6813

LEGAL

Colorado Revised Statutes
https://leg.colorado.gov/agencies/office-legislative-legal-services/colorado-revised-statutes

Boulder Municipal Codes
https://library.municode.com/co/boulder/codes/municipal_code

Law Line 9 KNBC (Wednesdays from 4–5:30 p.m.)
303-698-0999

Colorado Judicial Website (Information and forms)
www.courts.state.co.us

Small Claims Court
(Claims under $7,500 in value)
Forms and information
www.courts.state.co.us/Self_Help/countycivilappeal
303-441-3750

Boulder Office-Colorado Legal Services (Income-qualifying)
https://www.coloradolegalservices.org/node/313/boulder-office-cls
303-449-7575

CU Legal Clinic
(for the Boulder community)
www.colorado.edu/law/academics
303-492-8126

Boulder County Bar Association (Find an attorney or register for a free consultation)
www.boulder-bar.org
303-440-4758

Rocky Mountain Legal Center
www.rmlegal.org
720-242-8642

Bridge to Justice
Sliding scale. No-cost representation to tenants facing eviction.
www.boulderbridgetojustice.org
303-443-1038

Colorado Legal Services (Income-qualifying, outside Boulder County)
www.coloradolegalservices.org
303-837-1313

CRIMINAL BACKGROUND CHECKS

Colorado Bureau of Investigation
www.cbirecordscheck.com
303-239-4208

CREDIT

TransUnion
www.transunion.com
800-888-4213

Experian
800-397-3742
www.experian.com

Equifax
www.equifax.com/personal
800-685-1111

Federal Trade Commission
www.ftc.gov

The Fair Credit Reporting Act (FCRA),
15 USC § 1681 *et seq.*
www.ftc.gov/tips-advice/business-center/privacy-and-security/credit-reporting

MISCELLANEOUS

Boulder Area Rental Housing Association
www.barhaonline.org
303-494-9048

Landlord-Tenant Handbook

A Guide to Rights and Responsibilities for
Residential Landlords and Tenants

Housing and Human Services Department
Community Mediation and Resolution Center

https://bouldercolorado.gov/community-mediation-and-resolution-center

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