

Landlord-Tenant Handbook

A Guide to Residential Landlords' and Tenants'
Rights and Responsibilities



Housing and Human Services Department

Community Mediation Service

303-441-4364

BoulderColorado.gov/Community-Relations/Mediation-Program

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INTRODUCTION

This handbook was prepared and printed by the City of Boulder Community Mediation Service (CMS) and reviewed by the Boulder City Attorney's Office. It summarizes existing State of Colorado and City of Boulder residential landlord-tenant law. Knowledge of the Colorado Revised Statutes (CRS) and the Boulder Revised Code (BRC), which regulate rentals, as well as the United States Code (USC), is valuable to tenants and landlords in preventing problems before entering into a lease, as well as for answering questions which may arise during the lease period or upon termination of the lease. All information contained in this handbook is subject to change at any time through subsequent court decisions or legislation.

The information in this handbook does not constitute legal advice. Information contained herein is current as of Jan. 1, 2019 but there is no assurance that the laws have not changed or been amended. This information is intended to serve only as a general guide and is not intended to be used as a substitute for seeking advice from an attorney or other qualified professionals.

In general, both landlords and tenants 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. Both parties should make an effort to communicate effectively and engage in a collaborative relationship.

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, city of Boulder residents can contact the City of Boulder Community Mediation Service (CMS) at 303-441-4364. CMS uses neutral, third party mediators to assist in resolving disputes between landlords and tenants or between roommates. CMS charges a low fee for its services, though this fee may be waived for low-income clients.

Mobile Homes

The laws governing mobile homes are separate from those governing other landlord-tenant relationships. CMS has a separate handbook with information on mobile homes.

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 will last longer than 30 days (BRC §12-2-3 "Leases to be Provided").

A lease will set forth the terms of possession, such as rent, length of time of possession 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. 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 of commencement of the rental, 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 provide each tenant with a copy of a written rental agreement signed by the parties within seven days and 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 (Senate Bill 18-010).

A copy of the Boulder Model Lease, endorsed by the City of Boulder, can be found at <https://bouldercolorado.gov/community-relations/mediation-program>.

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 to the exclusion of others (CRS §38-12-502(6))
- **Property Manager** a person or firm charged with operating a real estate property for a fee

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 renegotiates a new lease or stays on as a month-to-month tenant with the landlord’s express consent.

Neither the landlord nor the tenant need to give notice of termination at the end of a term lease unless the lease states that such notice is required. However, it can be generally helpful for landlords to know if their tenants wish to remain in the property and for tenants to know if remaining is an option. 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 renews automatically 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 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, and change or terminate the agreement with proper written notice to the tenant. 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 month (CRS §13-40-107). 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. 23).

Tenancy at Will

Where no time is specified for the termination of a tenancy, the law construes 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.

Holdover Tenant

A holdover tenant is someone who once was a tenant but has remained after their tenancy has ended. A holdover tenant may be treated at the election of the landlord as a trespasser or a tenant. If the landlord waives a wrongful holdover and allows the tenant to stay, unless there is a new agreement, the law implies a new lease begins between the landlord and tenant based upon the same terms and conditions as the expired lease. The acceptance of rent by a landlord after the lease expires creates a holdover tenancy.

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 including the length of notice required to give the tenant, times of day for entry, whether the 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
- **Use prohibitions:** Specific things not allowed such as pets or smoking. If there are no specific restrictions, a tenant may make use of a unit for any purpose not illegal or in violation of local ordinances and which doesn't create a nuisance or cause damage to the 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

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 property is smoking or non-smoking. Property owners may require a 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 people from smoking in common elevators, hallways, or other common areas of buildings within dwelling units (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 rapidly-changing 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.

Ultimately, a landlord has the right to prohibit the use of marijuana in a property, but 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 Americans with Disabilities 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.

Rental Application Fees

Requirements relating to rental application fees were signed into state law in April of 2019. A summary can be found at <https://leg.colorado.gov/bills/hb19-1106>

Renter's Insurance

If the lease does not contain a clause requiring the landlord to compensate the tenant for damage to personal property caused by the landlord's negligence, the tenant may wish to purchase renter's insurance. Renter's insurance is usually very affordable and may cover not only damage to personal property, but theft and other types of property loss, including to the rental unit itself. Depending on the terms of the policy, renter's insurance may also cover damage to other people's property that resulted from the insured party's apartment or the insured party's negligence.

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.

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. But a roommate agreement cannot change the conditions of the lease. Each person who signs a lease is liable for all of the conditions and responsibilities 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 a

tenant, assistance from an attorney is recommended. Legal advice should also be sought in cases where confusion exists regarding legal rights and responsibilities by any of 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 right to go to court altogether and must rely solely on the decision of a predetermined arbitrator.

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. This applies only if the lease contains a clause allowing for the award of such monies to either party (CRS §13-40-123). If a court finds that a tenant wrongfully continued possession after termination of the lease, the court could require the tenant to pay the reasonable rental value for the time 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 verbal changes to the lease in writing.

Lease Disclosures

In the city of Boulder landlords must provide tenants with written information (disclosures) about certain city regulations (BRC §12-2-4). These disclosures include requirements regarding occupancy, noise, fireworks, snow removal, etc. A sample lease disclosure letter can be found at <https://bouldercolorado.gov/community-relations/mediation-program>.

Agreements in Writing

Landlords and tenants should be sure that all obligations are in writing and signed by all parties.

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 before the end of a lease term to pay for the remainder of rent due for their entire term (Federal Soldiers and Sailors Civil Relief Act; 50 USC App. § 534)
- Requiring a tenant to waive the covenant of Quiet Enjoyment
- 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)
- Tenant consent to eviction for non-payment of rent, or for any other reason, without a 3-day Notice as required by Colorado statute (CRS §§13-40-01 thru 123)

BEFORE MOVE IN

Walk-Through

Landlords and tenants should do a walk-through of the property together and fill in and sign the 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 generally a good practice to take date-stamped photographs or date-stamped video of the property at the beginning 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. A thorough move-in checklist can help avoid misunderstandings about the security deposit at the end of the rental term. Some landlords and tenants also find it helpful to have a neutral third party, such as a neighbor, accompany them on the walk-through.

Credit and Criminal 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 should consult a lawyer to make sure they comply with all of the requirements as put forth by the Fair Credit Reporting Act (FCRA, 15 USC §1681 *et seq.*) <https://www.ftc.gov/>.

Landlords need written permission from applicants to conduct a credit report. The landlord must give the applicant or tenant a notice if the landlord decides not to rent to the applicant or takes other action based on the information from the credit report.

Security Deposit

Also called a damage deposit, a security deposit is a tenant's advance payment of money to the landlord to secure against future lease violations by the tenant, including nonpayment of rent and property damage beyond ordinary wear and tear (CRS §§38-12-101 thru 104). It is generally a good practice to specify the amount of the security deposit in the lease. Landlords should 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. 27).

Pet Deposit

Pet deposits are similar to security deposits in that they may be returned to the tenant at the end of the tenancy. Even if stated otherwise in the lease, pet deposits are not "non-refundable" and must be treated like a security deposit. However, landlords can charge an additional fee or extra rent for pets. Tenants should make sure they understand whether the lease requires a pet deposit (must be treated like a security deposit) or a pet fee (an additional fee or extra charge to the lease payments that allows them to keep a pet).

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 AND REPAIRS

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

- There is a specific agreement between the landlord and the tenant (i.e. such as a lease), which specifies that the landlord is responsible for repairing or maintaining the premises; or
- There is a specific agreement between the landlord and the tenant that the landlord will make specific repairs (such as an attachment to the lease or a letter of promise); or
- 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.
- 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)

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 may bring an eviction suit against the tenant for failing to pay rent. Although a repair claim may be used as a defense against such an eviction suit in certain situations, the judge may require the tenant to put the amount of the withheld rent in an escrow account until a ruling is made (CRS §38-12-503(6)(b)).

Rental Licensing, Boulder Revised Code 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 License 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. Tenants and prospective tenants may verify the status of a property's rental license by calling the City's Rental Housing Licensing Office at 303-441-3152 or may search for and view a map of licensed

residential rental properties on the City of Boulder website. Consult with 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).

Warranty of Habitability

Every landlord is required to fulfill certain requirements that make the rental property fit for human habitation (CRS §38-12-503). A property may be uninhabitable if any of the following are lacking (CRS §38-12-505):

- Waterproofing and weather protection
- 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))

However, for the Warranty of Habitability to be breached, two additional elements must also exist:

- The residential premises are in a condition that is materially dangerous or hazardous to the tenant's life, health or safety AND
- The landlord has received written notice of the condition and has failed to cure the problem within a reasonable time

If a landlord fails to return the premises to habitable condition within a reasonable time after proper notice from the tenant, the tenant may have legal recourse to vacate the premises and stop paying rent by following a specific process and specific timeline as provided by the Warranty of Habitability (CRS 38-12-507). It is advisable to consult with an attorney to assist with this course of action.

Additional tenant protections related to habitability were signed into state law in May 2019. A summary can be found at <https://leg.colorado.gov/bills/hb19-1170>

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 larger property management companies, "through tenant portal."
- **Provide request and deadline in writing:** Request the repairs be made by a certain date. A sample letter is available at bouldercolorado.gov/community-relations/mediation-program
- **Facilitate Repairs:** Tenant and landlord cooperate to schedule entry of repairpersons
- **Check Codes:** For city of Boulder properties, if the tenant suspects a violation of the Boulder Revised Code, the tenant may call Housing Inspection and Rental Licensing at 303-441-3152. A housing inspector will come to the property and determine if there is a violation. If the violation is minor, the landlord will be given a 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 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.

Repairs to Appliances and Amenities not Covered by Boulder Revised Code

Appliances and amenities such as dishwashers and wifi service that are not covered by the Boulder Revised Code but were functioning, or were assumed to be functioning, at the start of the lease term are considered part of the rental property. Whose responsibility it is to repair appliances and amenities should be addressed in the lease. Tenants are financially responsible for damages resulting from the tenant's or their guests' abuse or negligence. In the absence of language in a lease that addresses who is responsible to maintain appliances, it is generally a business decision whether the landlord should perform repairs.

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 or contractors. 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.

Carbon Monoxide (CO) Detectors

Colorado law requires rental properties (either single family or multifamily), that use fuel heaters or 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 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 done
- 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 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 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

Additional requirements specific to bed bug remediation were signed into state law in June 2019. A summary can be found at <https://leg.colorado.gov/bills/hb19-1328>

Mold

Mold in buildings can potentially present a significant health issue for building inhabitants. Environmental sampling for mold can help to determine the extent of the problem, the location of mold, and the scale of the remediation 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. Additional information on mold issues is available from Boulder County Public Health (BCPH) at 303-441-1100.

There are currently no regulations specifically addressing remedies for mold. If tenants suspect they are experiencing a health issue as a result of mold, they should consult with an attorney about their options for early termination of the lease.

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.

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 of an attorney should be sought or mediation can be requested through CMS.

Before a tenant denies entry to a landlord for any reason, an attorney should be consulted.

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 instance, if water leaks develop that damage a tenant's personal property. Additionally, if there is a problem with the property that was not apparent at the time the tenant first entered into the lease, or if the property is damaged by natural causes such as flooding, windstorms, etc., and this damage makes the property unsuitable to live in, this may constitute a breach of the covenant. In these situations, the tenant should notify the landlord in writing. If the landlord does not fix those conditions within a reasonable time after being requested by the tenant to do so, the tenant may have legal remedies.

"Constructive eviction" is exercised when a tenant vacates the property before the end of the lease term due to the landlord's conduct that makes the condition of the leased property unsuitable or because of the landlord's failure to fulfill an obligation to repair damage. The advice of an attorney should be sought in these situations or mediation can be requested through CMS.

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. A fee of more than five to ten percent of the monthly rent, however, may be considered excessive.

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), and (CRS §§38-20-107 thru 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, however, 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 tenant should document, in writing, what property was taken, as well as keep all written notices received from the landlord. Tenants should 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 agency. The collection agency will attempt to recover the debt and/or seek a court judgment on behalf of the landlord. Such action can impact a tenant's credit report.

DISCRIMINATION PROTECTIONS

“A landlord may not discriminate against a tenant on the basis of “race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, mental or physical disability, source of income, or immigration status unless otherwise required by law, of the individual or such individual's friends or associates” (BRC §12-1-2).

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 above-listed categories (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
- 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 doesn’t 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 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 Nov.17, 1981 and remains in effect. These exceptions can be found in BRC12-1-2(b).

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.

Source of Income Discrimination

In 2018, Boulder City Council adopted an ordinance which made 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 to or on behalf of a renter or buyer including but not limited to: child support, disability benefit, housing voucher, rent subsidy or other public assistance.

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 but refuses to make repairs when those repairs are requested 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 techniques such as obtaining credit reports, checking personal references and criminal history. 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.

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 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 of the property to how it was before the modification was made.

Service Animals and Emotional Support Animals

The Fair Housing Act, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) dictate that landlords may be required to make reasonable accommodations for a tenant with a disability (i.e., a physical or mental impairment that substantially limits one or more major life activities) to live with an assistance animal if the person making the request to live with the animal has “a disability-related need for an assistance animal” (Office of Fair Housing and Equal Opportunity “FHEO” Notice: FHEO-2013-01). Permitting a tenant with a disability to possess an assistance animal despite the existence of a “no pets” policy at a property is an example of a reasonable accommodation.

An assistance animal is not a pet. According to the Department of Housing and Urban Development (HUD), an assistance animal, “is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability” (FHEO Notice: FHEO-2013-01).

Considerations about Assistance Animals

- Landlords covered by the ADA are limited in the questions they can ask of tenants asking to use assistance animals. In the housing context, entities covered by the ADA include 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-2013-01). Landlords for whom the ADA does not apply may ask individuals who have disabilities that are not readily apparent to the landlord 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 certification or registration downloaded from a website may not be adequate documentation.
- Assistance animals are not exempt from local animal control or public health requirements
- Landlords may not charge a pet deposit for an assistance animal, but they may charge the same fees and deposits for cleaning and damage that they would charge other tenants

- Assistance animals are not required to be visibly identified
- Assistance animals are usually dogs, but federal law allows for other types of animals to be assistance animals as well

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-2013-01)

A request for a reasonable accommodation may not be unreasonably denied and a response may not be unreasonably delayed. 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)):

1. 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

2. 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 this 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 be able 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 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 leases.

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 and 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. 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 if they wanted to. However, if notice of termination was provided after June 9, a new rental month would begin on July 1.

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 a court may still find that a landlord should have taken reasonable action to find a replacement tenant if the early termination results in a lawsuit. 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 issues present a barrier to re-rental, landlords should

take 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 pgs. 12-16) are complicated under Colorado law and the advice of an attorney should be sought in these 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 or application assistant 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 the statute, the relationship between the perpetrator and the victim need not be intimate; a roommate can be the victim of domestic abuse by a fellow roommate (CRS §38-12-402).

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, if it is known to the landlord (CRS §38-12-402(4)).

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 servicemember 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 which form the basis of the termination. If a servicemember pays rent on a monthly basis, once he

or she gives proper notice and a copy of the military orders, then the lease will terminate 30 days after the next rent payment is due.

For example, if 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 servicemember or 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 servicemember, or are seeking to evict a servicemember, 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 lease amount 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-thru, check-in/out sheet and a security deposit from the new tenant. The rental term of a sublease may be shorter than the original lease term. For example, a tenant with a lease term of one year, from January through December, might sublease

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 transfers the original tenant's right to possession of the rental property to the new tenant. In an assignment, the new tenant assumes all responsibility for payment of rent directly to the landlord. Assignments must be negotiated between the original tenant and the landlord. Unless the lease allows an assignment and also releases the original tenant from the obligations of the lease, the original tenant is still liable for all conditions of the lease.

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 thru 104). The courts have determined that security deposits cannot be used 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 damages if damages exceed the security deposit amount.

It is 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.

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 that portion of the deposit.

What is Normal Wear and Tear?

Normal wear and tear 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 his household, or their invitees or tenant or members of his household, or their invitees or guests (CRS §38-12-102 (1)).

An example of normal wear and tear includes worn tracking in the carpet. Normal wear and tear does not include stains on the carpet, nail holes in the walls, and mold on grout.

Reasons to Withhold a Security Deposit

- Damages beyond normal wear and tear
- Unpaid utility bills
- Past due rent
- 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
- 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. 24).

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 through the Community Mediation Service or online at <https://bouldercolorado.gov/>.

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 most situations, they cannot charge full replacement value for items that were damaged. Landlords may calculate the depreciated value of damaged property based on the expected lifespan of components, if the calculations are made in good faith and are reasonable when looking at the totality of the circumstances.

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 v. Young*, 107 P.3d 393 (Colo. 2005). Forfeiting this right does not prevent the landlord from later suing the tenant for damages.

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 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 may 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 doesn't 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. The tenant may also send a duplicate copy via regular mail. 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 the letter, the tenant may not sue for treble damages.

Court

If the landlord does not return the deposit within the seven days, the tenant may sue the landlord, usually in County Court, 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.

The statute of limitations (deadline) to pursue treble damages is one year. The statute of limitations to pursue the return of all or part of the security deposit is six years.

Mediation

For properties within the city of Boulder, contact CMS 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 to 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 surrender and acceptance of the premises, 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 <https://bouldercolorado.gov/> under Community Mediation Service.

EVICTION

The legal term for eviction is “Forcible Entry and 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 monitor the removal of the tenant, and the tenant’s property, from the premises, if necessary.

Eviction Without a Court Order

It is not legal for a landlord to evict a tenant without a court order. 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. 35 for more information on tenant’s

possessions). If a tenant is locked out, the tenant may not force his or her way back into the premises. A tenant should seek legal advice before attempting to re-enter the premises on their own.

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.

In the Event of a Lockout Without a Court Order

Any form of self-help eviction by a landlord without a court order, including locking a tenant out of the premises, is not permissible. Actions such as physical contact or intimidation should be reported to the police.

Eviction Process

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

Before filing a suit to evict a tenant for nonpayment of rent, or for a lease violation, (see below for repeated or serious lease violations), the landlord must give the tenant a written and signed “Ten Day Demand For Compliance Or Right to Possession” notice, (formerly a three day notice), giving the tenant the choice of either paying the past due rent, remedying the lease violation, or moving out within ten days. The landlord can serve the tenant this 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).

When computing the ten days 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. 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 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 in ten days, 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 Department website <https://www.courts.state.co.us/>.

The tenant’s right to a three-day notice prior to eviction for nonpayment of rent cannot be taken away by any language that is in the lease.

Tenant Has Repeatedly or “Substantially” Violated the Lease

Termination of the tenancy by the landlord may be sought by posting or delivering a “Notice to Quit” under certain conditions involving repeated violations for which the ten day notice has been previously given (CRS §13-40-104(l)(e.5)), or serious violations usually involving drugs or violence or criminal behavior as defined by statute (CRS §13-40-107.5), *Miles v. Fleming*, 214 P3d 1054 (Colo. 2009). This does not give a tenant an opportunity to “cure” the problem, but simply demands the tenant leave within three days. Legal advice should be sought to determine if circumstances warrant this action.

A victim of domestic violence or abuse is generally not subject to eviction under this provision (see pg. 25).

If the tenant does not voluntarily vacate the premises in three days, the landlord may file an eviction suit.

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 call the landlord, the Community Mediation Service, and/or legal counsel to attempt to resolve the issues. This could involve paying the rent that is owed, 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 within the ten day period, the landlord may initiate an eviction suit under a specific procedure set forth by Colorado state statute titled “Forcible Entry and Detainer” (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 the eviction lawsuit, or FED action, to evict the tenant or tenants from the property. Within 14 days from when a landlord files an eviction suit, the tenant must be served with a summons, a copy of the complaint, and a blank copy of the answer form if the suit is filed in County Court. Each person named as a defendant in the case must be served with his or her own individual copy of the summons complaint and answer form. This is known as “service of process” or simply “service.” The rules regarding proper service can be found in CRS §13-40-112, and CRCP Rule 304 (for eviction suits filed in County Court), or CRCP 4 (for eviction suits filed in District Court). Improper service will delay the eviction hearing and may result in dismissal of the complaint. More information

regarding proper service can be found at https://www.courts.state.co.us/Self_Help/houseevictions/.

The methods of service will determine what outcomes may or may not be allowed in court. If the service process is personally served (where the tenant receives the summons directly from a process server) the court can make a ruling regarding possession of the property and monetary claims. If service is done by posting and mailing, the court can make a ruling only regarding possession of the property.

Personal service of a summons to eviction court cannot be performed by the landlord or owner or any other person who is named as a party to the suit. Typically, a landlord will hire a private process server or may have the sheriff's office service the papers (which may be less costly).

In limited circumstances, a landlord can serve a tenant with court papers by posting the court documents at the rental property and mailing a copy of the complaint and summons to the tenant.

The timing of the service as it relates to the court date and the return of service which documents how the court documents were served are other important considerations the landlord should be aware of. More information can be found on the State of Colorado Judicial Department Website <https://www.courts.state.co.us/> or 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 should make every effort to appear in court on the date of the eviction hearing. If the tenant fails to appear in court on the hearing date the court will almost always rule in favor of the landlord for possession of the property. Tenants who come to court will typically be given an opportunity to mediate with the landlord or the landlord's representative, may be able to negotiate a longer period of time in which to move out and may avoid having an eviction judgment on their record if they meet the landlord's requests for a moveout timetable, payment of back rent, etc.

Tenants who believe they have a legal defense to eviction will need to file an answer on the form that is served along with the complaint and summons and bring that to the court at or before the return date stated on the summons. If the judge agrees that the tenant may have a legal defense to the eviction suit, the court will set a trial date, usually within a week, in which the tenant can present their defense to the eviction suit. Non-payment of rent for reasons such as loss of job, illness, or substandard conditions in the property is very rarely a legal defense against eviction.

After Court

If the landlord has gone through the proper procedure and obtained a court order for eviction, the tenant typically has 48 hours to voluntarily leave the premises (CRS §13-40-122).

If the tenant does not comply, the sheriff may be contacted to physically remove the tenant and supervise the removal of the tenant's belongings from the property. The landlord may put these personal belongings outside of the rental property, but they 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 prevailing party in a Forcible Entry and Detainer suit is entitled to an award of reasonable attorney's fees and costs of the lawsuit.

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 rent or other costs. Colorado courts, however, view an eviction ruling in favor of the landlord as a termination of the lease, and costs owed by tenants may be limited accordingly.

Time Frame for Eviction

From the initial posting of a three-day notice through recovery of possession an eviction can take anywhere from three days to three months. However, the average contested eviction takes approximately three to five weeks.

MISCELLANEOUS

Abandonment and Abandoned Property

If the landlord observes no evidence of movement in or around the property for an extended period of time, or if there are other physical signs that the tenants have left the property, such as substantial removal of personal belongings, or return of the keys, (especially if rent has not been paid), the landlord may attempt to obtain a written document from the tenant returning possession of the property to the landlord and relinquishing any remaining belongings to the landlord. Doing so will save the landlord the time and expense of going through the eviction process and will save the tenants the impacts of an eviction suit on their rental history.

If it appears that a tenant has left personal possessions behind in a rental unit, the belongings are considered abandoned if the tenant has not contacted the landlord for at least 30 days and the landlord has had no communication with the tenant indicating their intentions not to abandon the property. In this case, the landlord must send a 15-day written notice to the tenant by registered or certified mail, mailed to the tenant's last known address (which may be the landlord's own property) stating the landlord's intentions to sell or dispose of the property. The landlord should retain copies of this notice and either the signed return receipt, or the proof that the notice was unclaimed, for at least one year. If the notice is returned as undeliverable, the landlord must place a notice for one day in a newspaper in the county where the property is located prior to disposing of the property (CRS §38-20-116).

If a landlord is unable to comply with these procedures, then to limit liability, the landlord could instead follow the eviction process and obtain a writ of restitution granting the landlord possession of the property and any 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

If a lease specifies the amount of rent to be paid, it cannot be raised during the lease period. However, once the lease has expired, the rent amount may be raised, lowered, or renegotiated. There are no rent control laws or other restrictions currently in place in the State of Colorado (CRS §38-12-301). As a result, the rent may be changed every time the lease is up for renewal (e.g. every year in most fixed term leases). In the case

of a month-to-month lease the rent amount may be changed each month unless otherwise specified in writing.

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 out the 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 on 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), 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. A tenant's failure to abide by HOA rules could constitute a lease violation that could lead to eviction.

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.

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

RESOURCES

MEDIATION

City of Boulder Community Mediation Service
<https://bouldercolorado.gov/>
303-441-4364

Longmont Mediation Service
<https://www.longmontcolorado.gov/>
303-651-8444

Jefferson County Mediation Services
<https://www.jeffco.us/mediation-services>
303-271-5060

Mediation Association of Colorado
<http://coloradomediators.org/>
303-322-9275

CITY AND COUNTY

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

Boulder Police-Code Enforcement Unit
(weeds, trash, snow, noise)
<http://user.govoutreach.com/boulder/faq.php?cmd=shell&goparms=cid%3D23578>
303-441-3333

Housing Inspection and Rental Licensing
<https://bouldercolorado.gov/plan-develop/rental-housing-licensing>
303-441-3152

City of Boulder Office of Human Rights
<https://bouldercolorado.gov/community-relations/human-rights-and-wage-enforcement-old-2012>
303-441-4197

City of Boulder Planning Department
(Code enforcement of building code & safety, occupancy)
<https://bouldercolorado.gov/planning>
303-441-1880

COLORADO

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

Civil Rights Division Fair Housing
<https://www.colorado.gov/pacific/dola/fair-housing-resources>
303-864-7810

Housing Discrimination
<https://www.colorado.gov/pacific/dora/civil-rights/housing-discrimination>
303-894-2997

CRIMINAL BACKGROUND CHECKS

Colorado Bureau of Investigation

<https://www.cbirecordscheck.com/>
303-239-4208

<http://www.rmlegal.org/>
720-242-8642

LEGAL

Colorado Revised Statutes

<http://www.lexisnexis.com/hottopics/michie/>

Boulder Municipal Codes

https://library.municode.com/co/boulder/codes/municipal_code

Law Line 9 KNBC (First Wednesday of the month, 4–5:30 p.m.)
303-698-0999

Colorado Judicial Website (Information and forms)

<https://www.courts.state.co.us/>

Small Claims Court

(Claims under \$7,500 in value)
Forms and information

<https://www.courts.state.co.us/>
303-441-3750

Boulder County Legal Services

(Low-income only)
303-449-7575

CU Legal Clinic

(for the Boulder community)

<https://www.colorado.edu/law/academics/clinics/clinical-education-program-clients>
303-492-8126

Boulder County Bar Association

<https://www.boulder-bar.org/>
303-440-4758

Rocky Mountain Legal Center

CU Boulder Student Legal Services

(for CU students)

<http://www.cubouldersls.com/>
303-492-6813

Bridge to Justice

<http://www.boulderbridgetojustice.org/>
303-443-1038

Colorado Legal Services (low income, outside Boulder County)

<http://coloradolegalservices.org>
303-837-1313

CREDIT

TransUnion <https://www.transunion.com/>
800-888-4213

Experian

<http://www.experian.com/>
888-397-3742

Equifax

<https://www.equifax.com/personal/>
800-685-1111

Federal Trade Commission

<https://www.ftc.gov/>

The Fair Credit Reporting Act (FCRA),
15 USC § 1681 *et seq.*

<https://www.ftc.gov/enforcement/rules/rule-making-regulatory-reform-proceedings/fair-credit-reporting-act>

MISCELLANEOUS

Book - Landlord and Tenant Guide to Colorado Leases and Evictions, by Victor M. Grimm, Esq

Landlord-Tenant Handbook
A Guide to Residential Landlords' and Tenants'
Rights and Responsibilities

Housing and Human Services Department
Community Mediation Service
BoulderColorado.gov/Community-Relations/Mediation-Program