

## LANDLORD/TENANT RIGHTS

The following information has been compiled to help landlords and tenants avoid or resolve rental-housing disagreements. **This information should not be substituted for legal advice from attorneys or other qualified advisors.** In addition, the Colorado Revised Statutes, section 38-12-101 and 13-40-101 may be referenced.

### *Leases*

A lease (a written rental agreement) sets up the rules between the tenant and the landlord regarding the rental unit. A lease should protect both the landlord and the tenant. Leases can be set for any length of time, but most are for six months or one year. Examples of other provisions a lease sets forth are: identification of the leased property, number of persons who are to reside in the unit, security deposit, rent amount, rent due date, late penalty fee, utility responsibilities, yard care, trash removal, repair responsibility, subleasing and whether pets are allowed. During the term of a lease, changes cannot be made to the lease unless mutually agreed to by both the landlord and the tenant. The landlord and the tenant must sign the lease. If there is something in the lease that you do not understand or agree with, *DO NOT SIGN IT* until the issue is resolved. Once the lease is signed, both parties are bound to it. A standard lease form can be obtained from a book or stationery store. Provisions can be added to these forms to meet any special needs. If there is not a written lease and the rent is paid monthly, the tenancy is considered month-to-month. To protect both of you, make sure any agreements that are made that are not part of the original lease, are put in writing no matter how much you trust each other. If anything were to go wrong, most judges will not even let “oral agreements” be presented in court.

### *Moving In*

At the time of move in, a tenant should create a file in which to keep important documents related to their rental housing. The file should contain receipts for all deposits, the lease, a list of damages to the unit, monthly rent receipts and any other documents that pertain to their rental housing. Before moving into a rental unit, it is very important for the landlord and the tenant to examine the condition of the rental unit. All existing damages in the rental unit should be listed in writing and signed by both the landlord and tenant. If the landlord agrees to fix items, it should be specified on this document as well. This will avoid untold arguments pertaining to the refund of the security deposit and additional damage claims. If the landlord will not sign the list of existing damages noted, then a neutral witness should be present when the family inspects the rental unit. This witness can sign the existing damage list.

### *Moving Out*

Before moving out, both the tenant and landlord should inspect the rental unit. Both parties should sign a written statement of the condition of the unit. If the landlord refuses to inspect the unit at move-out, then the tenant should obtain a neutral witness to check the condition of the unit with them. Again, both should sign a statement of the condition.

### *Security Deposit*

A security deposit, (a.k.a. damage deposit or cleaning deposit) is a payment of money by a tenant to a landlord to cover damage or cleaning of a rental unit. A landlord cannot keep the security

deposit to cover normal wear and tear. A landlord can keep all or part of the security deposit to cover damage caused by the tenant's negligence, intentional abuse or cleaning beyond normal wear and tear. A landlord can utilize small claims court to collect money owed for damages that exceed the security deposit collected.

### ***Return Of The Deposit***

When a tenant leaves a rental unit, the landlord has 30 days (unless stipulated differently in the lease) to return the security deposit or send a written list of damages and the amount of money owed for repairs to the tenant. The above must be sent to the tenant's last known address. If a security deposit is wrongly withheld, the tenant could receive a judgment of three times of the amount wrongfully withheld, and court costs and attorneys' fees. A tenant may utilize small claims court for this purpose.

### ***Rent Increases***

If a lease exists the rent is locked in for the term of the lease. If there is not a lease, a landlord can increase a tenant's rent by giving the following written notice: 10 days written notice before rent is due if rent is paid once a month; 3 days written notice before rent is due if rent is paid weekly or semimonthly. Mobile Home Parks are required to give 60 days' written notice for rent increases on space when not protected by a lease for a longer period of time.

### ***Trespass By Landlord***

The tenant has the right to peaceful enjoyment of the property, but the lease can modify this right. Unless the lease provides otherwise, the landlord does not have a right to enter the property without permission of the tenant except to demand payment of rent or to make emergency repairs. A tenant can sue a landlord for violating the tenant's rights.

### ***Lockout By Landlord***

Under most circumstances, a landlord should not "lockout" a tenant for any reason without a court order. The landlord may be held responsible for interfering with the tenant's right to "peaceful possession" until a legal court eviction. A landlord who illegally locks out a tenant risks being sued for damages.

### ***Eviction***

The only way a landlord can legally evict a tenant is by going through the legal eviction process. A landlord may evict a tenant for the following 3 reasons:

- 1) **Failure to pay rent on time.** The landlord must first give the tenant a written notice\* demanding that the tenants either pay the rent or move out within 3 days. If the tenant fails to pay or move, the landlord may on the 4th day commence an eviction proceeding in county court. The tenant may contest the eviction, if the tenant thinks there are legal grounds, by filing an answer on or before the time set by the court. If the tenant fails to answer or appear on the date indicated in the eviction papers, the tenant will then have 48 hours to vacate or be forcibly removed by the sheriff's department.
- 2) **Breaking any terms of the lease.** If the tenant breaks any of the written or oral terms (remember, oral terms are hard to prove in court) of the lease, the tenant may be evicted in much of the same manner as nonpayment of rent. In such cases, the landlord must

give the tenant written notice of the lease violation and 3 days to remedy the situation or move. If the tenant fails to comply or move, the landlord on the 4th day may commence eviction proceedings in county court.

- 3) **No reason.** If the landlord wants to evict a tenant at the end of the lease period, the landlord can do so without giving a reason, but the landlord must give the tenant proper notice to leave. Notice to vacate must be served upon the tenant in a specified number of days before the end of the rental period. The length of the lease period is determined within the lease. If the lease does not state the rental term or a written lease does not exist, the rental period is determined by the frequency of rental payments. For example, if the rent is due each month, it is a month-to-month tenancy or lease. Notice to vacate requirements for rental lease periods is as follows: 1 year or longer - 3 months, 6 months to 1 year - 1 month, 1 month to 6 months - 10 days, 1 week to 1 month - 3 days, and less than 1 week - 1 day. If the tenant fails to leave, the landlord, again, must follow the procedures set forth above.

### ***Habitability Code***

Habitability is the condition of a building in which inhabitants can live free of serious defects that might harm health and safety (e.g., a lack of running water or broken windows). The Colorado Revised Statutes includes a definition of habitability and legal remedies for tenants living in units that do not meet the definition of habitability (C.R.S. 38-12-503 through 38-12-511). There are also a number of communities which have habitability codes. For more information, check with the Community Development or Planning Office within the city or county where you live.

### ***Written Notice\****

Written notice should contain the following: 1) the date, 2) the address of the rental unit, 3) the dollar amount of the rent owed or the lease violation, 4) the tenant's options of paying the rent or complying with the lease within three days or vacating the unit, 5) the notice must be signed by the landlord or the agent for the landlord, 6) if the tenant pays the full rent owed and/or complies with other terms of the lease within 3 days, this cancels the eviction, and 7) the Computation of Time law states that the 3-day period begins the day after the notice is given, and the last day of the 3 days cannot end on a Saturday, Sunday, or legal holiday.

### ***Counseling Services***

If you need further assistance, contact Tenant Landlord Counseling at (303) 237-0230 or Community Housing Services at (303) 831-1935.