

## ***Landlord/Tenant Basics***

This handout is created as an informational guide only and is not presented as legal advice. This handout is not intended to be used as a substitute for seeking advice from an attorney. It is presented as a summary of current State of Colorado and Larimer County residential landlord-tenant law.

### **YOUR RENTAL APPLICATION FEES**

*Effective August 2, 2019*

Landlords are prohibited from charging rental application fees UNLESS the landlord uses the fee to cover the cost of processing your application.

A landlord must provide to any prospective tenant who has paid a rental application fee either a disclosure of the landlord's anticipated expenses for which the fee will be used or an itemization of the landlord's actual expenses incurred. The landlord is required to make a good-faith effort to refund any unused portion of an application fee within 20 days. Landlords are also required to provide written notice of denial and reasons for denial for every denied rental application.

#### **What else?**

A landlord shall not consider:

- Credit or rental history beyond 7 years immediately preceding the rental application.
- An arrest record of a prospective tenant from any time or any conviction of a prospective tenant that occurred more than 5 years before the date of the application (with certain exceptions).

### **YOUR LEASE**

**What is it?** A lease is a legally binding document obligating the landlord to allow a tenant to occupy property for a stated length of time in exchange for rent. Though a lease can be oral or written, a lease should be put in writing and should ALWAYS be read carefully before signing. Keep a copy of the lease for your records.

#### **What should be in it?**

- The amount of rent
- Late fees, if any
- Amount of security deposit
- Length of rental period or tenancy
- Who is responsible for utilities?
- Who is responsible for repairs?
- Is subleasing or assignment of your lease permitted?
- When can the landlord enter your rental?
- Are pets allowed?
- What about overnight guests?

**How to make changes:** If there is anything in your lease you do not understand, get clarification from the landlord. If there is anything in it you do not agree with, decide with the landlord on how the matter will be handled before signing. Any changes should be done in writing and included in the lease. If something is changed in the lease, both you and the landlord need to initial the change to make it official. THERE IS NO RIGHT TO BACK OUT OF A LEASE ONCE IT IS SIGNED BY BOTH PARTIES. The only exception is if the landlord and tenant mutually agree in writing to rescind or void the lease.

**Always get a copy of the lease:** Be cautious if a landlord refuses to provide you a copy of the lease. This refusal may be an indication they are trying to hide something in the lease or will be difficult to rent from. If the landlord wants you to sign in a hurry, without reading the lease, this may also be an indication they are trying to hide something from you. NO rental unit is so great that you should not take the time to read through the lease and understand all items in it before signing. KEEP A COPY OF THE SIGNED LEASE until your lease has been terminated, you have vacated the rental unit, and your security deposit has been returned.

**Roommates and Joint and Several Liability:** When people enter a roommate situation, each person who signed the lease is usually “jointly and severally liable” for the lease. This means that although the tenant is responsible for his/her share of the rent, the landlord can choose to hold each individual 100% responsible for all terms and conditions under the lease. This can have the following repercussions:

- All residents of the household can be evicted if one person fails to comply with the lease
- If three people were on the lease and move out leaving damages, the landlord can choose to take only one person to court for the entire amount. This may happen in circumstances where the landlord may only know the current address of one person.
- The landlord may choose to return the full deposit to only one tenant, rather than divide it.

The only way to get around joint and several liability would be for the landlord to sign individual leases with each resident. This would not be in the landlord’s best interest.

Landlords will typically not get involved in situations between roommates. In the case that a roommate has a dispute with what his/her share was for damages or other expenses, the only recourse is to take the ex-roommate to court, usually Small Claims court.

### **MOVING IN**

**Walk-through:** Always do a walk-through with the landlord before moving in. A walk-through involves looking in detail at the condition of the rental unit and filling out a walk-through checklist form. The purpose of a walk-through is to ensure the landlord and the tenant has a shared understanding of the condition of the unit before the tenant moves in. When it is time to move out, any damages can be assessed realistically, and your security deposit can be returned fairly. The walk-through checklist should be completed and signed by both you and the landlord, and each party should get a copy. You can also take pictures before you move in so you have proof of the condition. KEEP A COPY OF THE SIGNED WALK-THROUGH CHECKLIST until your lease has been terminated, you have vacated the rental unit, and your security deposit has been returned.

Fort Collins Rental Housing Standards can be found at <https://www.fcgov.com/building/pdf/rental-brochure.pdf>

#### **Make sure to:**

- Change your address – see U.S. Postal Services’ website <https://moversguide.usps.com/> or visit your nearest post office.
- Connect to utilities, trash, internet, etc. if they are your responsibility under the lease
- Consider obtaining renter’s insurance. Renter’s insurance may cover damage to your personal property but also theft and other types of property loss.

### **TERMINATION OF THE LEASE**

NOTE: Terminations that deal with public housing, Section 8, other federally subsidized landlord-tenant situations or mobile homes may require compliance with additional requirements of public and subsidized housing programs and/or the Colorado Mobile Home Park Act.

Every landlord must follow the legal process in order to take back possession of a property. A landlord CANNOT interfere with a resident’s occupancy without following the proper procedure. The procedures for termination of a residential lease must be followed exactly. A tenancy cannot be terminated during the term of a written lease unless the landlord has a reason as outlined below under “For Cause”.

**Evictions “For Cause” or Involuntary Lease Termination (Forcible Entry and Detainer (FED) Legal Action:** There are several reasons a landlord may attempt to terminate the lease. The majority of the time a landlord initiates an eviction action to evict the tenant for the following reasons:

- Tenant has failed to pay rent, or
- Tenant has violated a term or condition of the lease, or

- Tenant has committed a substantial violation while in possession of the rental premises, which may include, for example, a violent or drug-related felony on or near the rental property or an act on or near the rental property which substantially endangers a person or the landlord's property, or
- Tenant refuses to leave the rental after the end of the lease, which includes a month-to-month tenant staying on after the landlord has given required notice that the lease will not be renewed at the end of the month.

**Evictions "Without Cause" or Voluntary Termination:** Leases may be written or oral. If the tenant has a written lease, it is best to read the lease regarding the amount of notice required for termination. For example, a landlord may require the tenant to give 30 days written notice before the end of the lease term. Keep a copy of all notices for your records.

A tenancy with a specific, unconditional termination date ends on that date and a notice to vacate is not required. Thus, a notice to quit is not necessary from or to a tenant whose term is by agreement to end at a date certain.

In all other cases, if the landlord does not plan on continuing with the tenancy they must give the tenant a notice of termination or notice to quit. The notice of termination must be in writing and served a minimum number of days BEFORE the end of the tenancy. Below are the different notice requirements for different lengths of tenancies. These are notifications from the landlord to the tenant confirming that the tenancy will be over at the end of the lease term.

- A tenancy of one year or longer, ninety-one days;
- A tenancy of six months or longer but less than a year, twenty-eight days;
- A tenancy of one month or longer but less than six months, twenty-one days;
- A tenancy of one week or longer but less than one month, or a tenancy at will, three days;
- A tenancy for less than one week, one day.

**Early Termination of a Written Lease:** If the tenant does not have a written lease, he/she is most likely on a month-to-month tenancy. With a month-to-month tenancy, either party may give (21) days before the end of the lease term unless stated differently in the written lease.

If a tenant chooses to terminate the lease before the end of the lease term, the landlord may choose to keep the deposit and take the tenant to small claims court for the remainder of the lease term. If the landlord chooses to do this, he/she must prove to court that he/she tried to mitigate the loss or reduce the loss or rent (e.g. advertised the apartment and was unable to rent). The landlord cannot double-dip and collect rent from the new resident and keep money from the old resident to cover rent for the same time period.

For a tenant who wants to terminate before the end of the lease it is best to give the landlord as much written notice as possible and offer to help find a new tenant. The only reason a court may recognize as a valid reason for breaking a lease is starting active military duty pursuant to the Servicemembers Civil Relief Act (50 U.S.C Section 3955) and victims of domestic violence pursuant to Colorado Revised Statute Section 38-12-402.

**What should the Notice to Quit or Demand for Possession include?**

1. The landlord must serve the tenant a notice that:
  - a. Is in writing
  - b. States the grounds for possession, such as non-payment of rent
  - c. Describes the property
  - d. States the timeframe to comply or vacate the property AND
  - e. Is signed by the landlord or landlord's agent
2. Nonpayment of Rent – the notice must advise the tenant that they have ten (10) days to pay rent or vacate the property. The 10 day period starts the day after the tenant received the notice or the notice was posted in a conspicuous place at the tenant's residence. The tenant has until midnight of the 10th day to resolve the problem in full to avoid going to court.
  - a. Tip – lease terms that attempt to waive a tenant's right to a ten (10) day notice to pay or leave are invalid.
  - b. EXCEPTIONS
    - i. For a nonresidential agreement or an employer-provided housing agreement, three (3) days notice is required.

- ii. For a residential agreement leasing a single family home by a landlord who owns five (5) or fewer single family rental homes a five (5) day notice is required so long as the agreement states that a ten (10) day notice period does not apply in this case.
- 3. Violation of a condition or term of the tenancy – the notice must give the tenant the choice of moving or curing the violation within ten (10) days.
  - a. Second violation – A second notice for the same violation does not have to allow the tenant the right to cure the violation or leave, it must only give ten (10) days to leave.
  - b. EXCEPTIONS
    - i. For a nonresidential agreement or an employer-provided housing agreement, three (3) days notice is required to move or cure.
    - ii. For a residential agreement leasing a single family home by a landlord who owns five (5) or fewer single family rental homes a five (5) day notice to move or cure is required so long as the agreement states that a ten (10) day notice period does not apply in this case.
      - 1. Second violation – A second notice for the same violation does not have to allow the tenant the right to cure the violation or leave, it must only give the required three (3) day or five (5) day as stated in the EXCEPTIONS above.
- 4. A Substantial Violation – the notice does not have to allow for an opportunity to come into compliance with the lease but is merely a three (3) day notice to leave.
- 5. Timing of a notice to quit or demand for possession – the countdown begins after the day served (posted). Every day is counted including holidays, Saturdays and Sundays. If the last day of the period is a Saturday, Sunday or legal holiday, the period ends the next day that is not a Saturday, Sunday or legal holiday.
- 6. Service – the notice must be properly served by giving personally to the tenant or a member of the tenant’s family over the age of 15 or, if effort has been made to personally serve, the landlord may post in a conspicuous place on the premises if no one is home.

### **THE JUDICIAL PROCESS**

***Timeline for non-payment of rent:***

Day 1	Tenant Served with a ten (10) day demand to pay rent, cure a violation or move
Day 11	Tenant must pay, cure the violation or move
Day 12	If tenant fails to pay or cure, Landlord may file and eviction case in court and serve tenant with a summons and complaint.
Day 19-26	Tenant has at least 7 days and no more than 14 days to file an answer to the complaint. The date will be specified in the summons as the “return date”. The landlord has no obligation to accept rent and allow the resident to stay.
Day 21-28	If tenant does not file an answer on or before the “return date” a default judgment will be entered against the tenant in favor of the landlord. If a default judgment is entered, a tenant must vacate within 48 hours. The tenant will have an eviction on his/her record.
Day 19-31	If tenant filed an answer on or before the “return date”, trial may be scheduled within five business days of the “return date.”
Day 21-33	If after trial judgment is entered against tenant in favor of landlord, tenant has 48 hours to vacate, or be removed by the sheriff. This is the first time the landlord can physically take possession.

### **SUMMONS AND COMPLAINT**

The summons is issued by the court or attorney and must contain specific language including the date tenant must appear at court, “return date”. It must also describe the property, grounds for eviction, name of person occupying property, and a request for recovery of possession of the property. It must be stated and proved by the landlord that the tenant was properly served a notice/demand for compliance or vacate.

### **SECURITY DEPOSITS**

***What is a Security Deposit?*** Landlords are entitled to deduct from a deposit amounts owed by the tenant for rent, utility charges, repairs, cleaning contracted for by the tenant and damages caused by abandonment.

**What can be withheld?** No deposit may be retained for normal wear and tear. The tenant is responsible for returning the unit in as good of condition as it was received, less normal wear and tear. Normal wear and tear means deterioration not due to tenant's negligence such as, peeling paint, worn carpets, faded curtains, etc.. The lease should stipulate which additional expenses the tenant will be responsible for (i.e., carpet cleaning).

If the landlord decides to keep any portion of the deposit, he or she must provide the tenant with a written statement listing the EXACT reasons for keeping the specified amount while returning the remainder. This statement must be delivered to the tenant at the tenant's last known address within one month after the termination of the lease. A lease may extend this time period up to 60 days.

**If Deposit is not Returned:** If this written statement is not provided in a timely manner the landlord forfeits all rights to any portion of the security deposit.

Any dispute by the tenant over security deposit requires written notice to the landlord a minimum of seven days prior to filing a court action against the landlord for wrongfully withheld deposit, penalty, attorney's fees and costs.

Important Action Steps:

- If the tenant does not receive his/her deposit by the deadline, he/she should send the landlord a 7-day letter requesting the return in full and threatening legal action if it is not returned.
- If the tenant receives the itemization of what was withheld and why, yet disagrees, he/she should send the landlord a 7-day letter disputing the charges, requesting the difference and threatening legal action if it is not returned.
- If a landlord has wrongfully withheld a tenant's deposit, the tenant can take the landlord to small claims court and seek treble damages (3 times the amount wrongfully withheld), plus attorney's fees and costs.
- If a court case is filed, the other side may file a counter claim for any damages they believe are due and owing to them.

Tip: Provisions in a rental agreement, written or oral, waiving rights regarding security deposits are void.

### OBLIGATIONS OF THE LANDLORD

**Duty to Repair:** General duty for minor repairs: Always review the lease to clarify who is responsible for which repairs and what the process is for repair and maintenance requests. The landlord will be responsible under the following:

- The lease contains a specific agreement that the landlord is responsible for repairs and maintenance.
- The repair or maintenance is required in order to conform to the Fort Collins Rental Housing Standards.
- The repair falls under Colorado's Warranty of Habitability code.

**Colorado's Warranty Of Habitability** outlines the landlord's responsibility to provide a rental unit that includes:

- Lacking functioning appliances;
- Mold that is associated with dampness, which if not remedied, would materially interfere with the health or safety of the tenant;
- Waterproofing and weather protection of roof and external walls in good working order, including unbroken windows and doors;
- Plumbing and gas in good working order;
- Running water and reasonable amounts of hot water and connected to a sewage disposal system;
- Functioning heating facilities maintained in good working order;
- Electrical lighting maintained in good working order;
- Common areas kept clean, sanitary and free from debris, filth, rubbish and garbage and have appropriate extermination in response to infestation or rodents or vermin;
- Appropriate extermination in response to infestation of rodents or vermin throughout a residential premise;
- Adequate number of appropriate exterior garbage receptacles in good repair;
- Floors, stairways and railings maintained in good repair;
- Locks on all exterior doors and locks or security devices on windows that open maintained in good working order;
- Compliance with applicable codes that if violated would constitute a condition that is dangerous or hazardous to tenant's life, health or safety.

If a repair is needed, it is advisable to notify the landlord as soon as possible **in writing** (keep a copy of the writing for your records). If the landlord has received reasonably complete written or electronic notice of the condition and does not

make the necessary repairs within a specified amount of time (24 hours, where condition is materially dangerous or hazardous to tenant's life, health, or safety; or 72 hours, where the premises is uninhabitable or otherwise unfit for human habitation) they may be in violation of habitability laws. If tenant provides notice of a condition that is imminently hazardous to life, health or safety, the landlord, at the request of the tenant, shall move the tenant to a comparable unit or hotel room as selected by the landlord but at no expense or cost to the tenant. A landlord is prohibited from retaliating against a tenant for making a good-faith complaint.

Note: Colorado now allows a tenant who satisfies specific requirements and conditions to deduct from one or more rent payments the cost to repair or remedy a condition causing a breach or possibly terminate the lease if conditions are not rectified (exceptions for publicly funded housing). However, care must be taken to ensure proper steps are taken.

**Duty of Quiet Enjoyment:** Every resident has the right to quiet and peaceful enjoyment of his/her rental property. This means that they should be able to live in their home free from unreasonable disturbances. If the landlord's actions or failure to act interferes with a resident's quiet enjoyment, it can be grounds for breaking the lease.

Examples:

- Landlord entering the unit without reasonable notice
- Landlord failing to make necessary repairs (stove, heat, etc.)
- Landlord refusing to correct a problem with noisy/disruptive neighbors

**Fair Housing:** It is illegal to discriminate base on race, color, national origin, religion, sex, disability or family status. No landlord may take any of the following actions based on these criteria:

- Refuse to rent housing
- Set different terms or conditions on rentals (families w/children on the first floor, etc.)
- Provide different housing services

Fair Housing laws do not apply on properties with 3 or less units in which the landlord resides in one of the units. Additionally, seeking to rent a room in the landlord's home can be discriminatory as well.

Discrimination is only illegal if it is covered under the Fair Housing Law. Other types of screening criteria or discriminatory practices are legal such as;

- Refusing to rent to students
- Denying rent based on poor credit or lack of credit
- Refusing to rent based on criminal history
- Housing can be designated as "senior" and becomes exempt from the family status portion of Fair Housing Laws.

Fair Housing laws also require landlords to make reasonable accommodations for people with disabilities. This includes allowing service animals, designated parking spaces and other accommodations that allow a person with a disability to enjoy the benefits of the rental property. If a resident believes he/she is being discriminated against, contact HUD to file a complaint at 1-800-877-7353 or 303-672-5437.

### **OBLIGATIONS OF THE TENANT**

Tenants agree to do the following:

- Pay rent on time
- Pay utility bills on time
- Comply with the terms of the lease
- Comply with building, health and housing codes
- Keep their dwelling reasonably clean and safe
- Dispose of trash properly
- Notify the landlord promptly and in writing of needed repairs if landlord's responsibility
- Use appliances in a reasonable manner
- Provide prompt notice to their landlord of the presence of bed bugs. Landlords must respond within 96 hours.

**Colorado Housing Connects (Landlord-Tenant Helpline)**

1-844-926-6632

**City of Fort Collins Neighborhood Services**

<https://www.fcgov.com/neighborhoodservices/>

970-224-6046

**City of Fort Collins Habitability Standards**

[www.fcgov.com/building/pdf/rental-brochure.pdf?20081223](http://www.fcgov.com/building/pdf/rental-brochure.pdf?20081223)

**Colorado Legal Services**

211 West Magnolia

Fort Collins, CO 80521

970-493-2891 (ext. 261)

[www.coloradolegalservices.org](http://www.coloradolegalservices.org)

**Larimer County Bar Association Pro-bono Program**

Info line: 970-402-2075

Fort Collins: 201 Laporte Ave, 4th Floor

Wednesdays 12 Noon; first come, first serve

Loveland: 302 3rd St SE

Thursdays 10am; first come, first serve

**Low Cost Legal Services Referral List**

[www.fcgov.com/landlordtenant/files/2017-legal-resources.pdf](http://www.fcgov.com/landlordtenant/files/2017-legal-resources.pdf)

**Larimer County Access to Justice & Self Help Center**

Access to Justice and Modest Means Attorney List

<https://www.larimerbar.org/access-to-justice-self-help-center>

**Housing of Urban Development (HUD)**

633 17th St

Denver, CO 80202

1-800-877-7353 or 303-672-5437

[www.hud.gov/complaints/](http://www.hud.gov/complaints/)