

## **Tenant's Rights in Colorado**

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### **I. The Law**

Depending on the kind of lease you have, different statutes (laws) will govern your rights and responsibilities. If you are a mobile home park tenant, many unique laws and provisions apply to you. Generally, the law which controls landlords and tenants in Colorado begins at C.R.S. (Colorado Revised Statute) 38-12-101. These statutes can be accessed online, for free, at the following: <http://www.lexisnexis.com/hottopics/michie/>

In Colorado, you do not need a formal lease agreement to establish a tenancy. It is possible to establish a landlord/tenant relationship without having a written lease agreement. However, if you are doing a "rent to own" lease with your landlord, you ***must*** have that agreement in writing. Without a formal written "rent to own," it is likely your lease will be interpreted as "just" a lease, and will not entitle you to buy the property moving forward.

The duration of your lease is one of the most important terms of your occupancy, whether you have a written agreement or a verbal agreement. The term of your occupancy determines how long your landlord must give you, if they are to evict you from the premises. It may also dictate how much notice a landlord must give you before they are legally able to terminate the lease agreement, unless your lease agreement has different provisions than those contained in the statute.

Generally, if you are served a notice to quit, it must comply with the following time-frames depending on the length of your lease. The length of your lease is often determined by how often you pay your rent (i.e. if you pay your rent in bulk at the beginning of the year, you have likely established a one year tenancy):

1. A tenancy for one year or longer: 90 days' notice
2. A tenancy between 6-12 months: 28 days' notice
3. A tenancy between one and six months: 21 days' notice
4. A tenancy between one week and one month, or a tenancy at will: 3 days' notice.
5. A tenancy of less than one week: 1 day's notice.
6. No notice to quit is necessary if your lease, per the terms of your lease, is terminating on a particular date, and that date, the landlord expects you to vacate the premises.

You can find these terms at C.R.S 13-40-107.

A lease is best considered as a "modification" of the laws in Colorado which control landlords and tenants. The law in Colorado is written to be fair to both sides of the transaction. A lease is a document your landlord customized to benefit and protect themselves. It is ***not*** a document they have written to be to your benefit.

You do not need to sign your lease as soon as it is provided to you. Not signing your lease immediately may cost you the unit, in the Summit County area, but it may save you a headache in the long run.

For example, a common practice in this state for mobile home parks is to levy very high fees on tenants for late payment of rent which “compound” over time. While the enforceability of that kind of term is an open question, the only way to escape from underneath that term, if you have agreed to it, is to go to court and/or initiate a lawsuit. A careful read of the lease can spare you from those issues.

Likewise, many landlords in Colorado do not have attorneys draft their leases. Many leases are simply form leases, that they have googled or used from sites like LegalZoom. This means that your landlord probably understands as much about the terms as you do. This also means that you can request edits or modifications to the agreement, if you do not agree with certain terms. If you are editing or amending your lease, **get those details in writing, from your landlord.**

If you are renewing your lease, be sure to get a new lease from your landlord, with new start and end dates. Be sure to confirm, in writing, that your landlord still has your security deposit and, if applicable, first and last month’s rent from when you first signed your lease. Do not rely on the old lease for that information; confirm it in writing in your new lease. If you do not have a written lease, make sure that you have these deposits confirmed in writing somewhere, and/or that you keep the cancelled checks from your bank statements.

DO NOT pay your rent in cash. If you must pay your rent in cash, you MUST have a receipt from your landlord, or something else in writing confirming that you are paying your rent. Likewise, if you are doing transfers between your banks (through a service like Venmo, etc.), make good notations in those transfers specifically what the funds are for. Typically, I send my rent with an “OConnor (month) Rent,” so that there is a clear record.

Your landlord is not your friend. They are also not your enemy. Your landlord is a person you do business with. Treat them like a business relation, and send money to them like you would send it to a business. Get documentation, keep receipts, and pay your rent on time.

It is possible that if you terminate your lease early, your landlord can sue you for the full balance of the rent you would have owed, if you stayed in the unit you are renting. You should check your lease to see what termination provisions exist, if any. Written leases will usually contain a total amount of what is owed over twelve months, in addition to what you owe monthly. Pay attention to these numbers, they are significant.

## II. Lease Terms

Many tenants and landlords assume that a lease is simply a recitation of the law, and that a lease only puts in writing what already exists under statute in Colorado. This is not accurate. The lease can, but need not, include specific references to the law, and can, but need not, address every area covered by the law as it relates to landlords and tenants.

Similarly, the lease may contain provisions which are not included in the statute. For example, nothing in the laws of this state prevent a landlord from applying your last months' rent toward damages. Likewise, nothing in the laws of this state authorize them to apply your last month's rent towards damages. It is an open question.

Judge Casias, who oversees most eviction cases in this County, has held that a landlord cannot withhold those amounts for that reason, unless a lease provides that they can. However, in the same case, when the Judge entered a judgment against the tenant, he held that the judgment could be paid from the last month's rent, and there was no penalty for holding the funds.

Your lease may be silent on that issue. Your lease may have a specific provision on that issue. The point is that regardless of what your lease is and is not silent on, you may have much different rights than you would under the law, and it is important to read carefully.

The most common "modification" in a lease changes the time-frame in which your landlord will return your security deposit to you. Your security deposit, under the law, should be returned within 30 days of your lease terminating. However, your landlord may (and many do) increase that timeframe for up to 60 days. Your landlord cannot legally extend the time-frame beyond 60 days.

If your landlord does not have a lease form they use, and want to do an oral lease agreement, you should feel free to create your own lease agreement, to provide to the landlord. Written leases define expectations between landlords and tenants, and they make solving issues in the future much more simple and cost effective. If your landlord refuses to provide you with a written lease, you should think very seriously about whether or not you would like to lease that apartment or home, at all.

### **III. Security Deposit**

The most common area of dispute between landlords and tenants is the return of your security deposit when you leave the unit. Under the law, your landlord may apply your security deposit towards:

1. Damage to the property
2. Rent
3. Costs of abandonment
4. Unpaid utilities
5. Repair work
6. Cleaning
7. Other items to which you may agree in a highly customized lease

Your landlord cannot apply your security deposit towards:

1. Normal wear and tear

This may seem lopsided; however, your landlord bears a risk by retaining your security deposit. Once the landlord has retained your security deposit, and accounted for it, you have the ability within seven days of receiving that accounting to raise a challenge with your landlord. You must do this in writing.

Once a contest has been raised, the landlord then must decide if it is worth keeping your deposit, or risking a judgment against them, for up to three times the amount of the security deposit, as well as for your attorneys' fees, if you hire a lawyer to help you get those funds back. This is a substantial risk for a landlord, usually not worth the money they have kept.

A security deposit is NOT last month's rent, though under the law, the landlord may keep your security deposit as last month's rent, if you did not pay. The security deposit language is very important, and you should spend time reviewing that portion of the lease, if you look nowhere else.

#### IV. Last Month's Rent

Last month's rent is just that – a prepayment of your final month of rent, usually as a guarantee that you will continue to be in the residence, and that you will pay your rent on time. There is no statutory provision related specifically to last month's rent. This means your landlord can often create a lease that is highly customized when it relates to last month's rent.

For example, your last month's rent could be used as a secondary security deposit, if your lease provides for it. Likewise, though there are specific time-frames for returning security deposits, there is no specific time-frame for returning last month's rent. Many tenants do not formally utilize their last month's rent, and simply pay through the end of the lease. If you believe that will be the case, you should work on including time-frames for return in your lease.

Last month's rent is not necessary, and is generally a function of a landlord friendly market, as opposed to any particular statute or law. Because last month's rent payments exist in a grey area, you should pay attention to this portion of your lease. When negotiating a lease term, do not be afraid to ask if your landlord will "pro-rate" the last month's rent if you cannot afford it. This means that you will pay higher rent for a period of time, until the difference between your normal rent and your higher rent has paid for the last month's rent. If you are entering into this arrangement with your landlord, ***get it in writing.***

Generally speaking, if your landlord is doing rent reductions, rent increases, or other unconventional things that do not match with the terms of your lease, ***re-write the lease or include those terms in a written amendment to the lease, which specifically refers to your lease, and the date you signed it.***

#### V. Late Fees

A common tactic of landlords in Summit County, particularly in mobile home parks, is to include in the lease very aggressive late fees provisions. Most leases have provisions that rent is

“due” on a particular date, and that rent is considered to be “late” on a different date. Pay attention to those provisions.

The lease should have an accompanying provision for what it means to be “late” on rent. Generally, that will include a one-time late fee, of a certain dollar amount. However, I have seen leases which compound those fees, meaning you incur a fee each day that rent is late, and continue to do so until it is paid. If this happens month over month, I have seen fees go as high as \$400 per day for non-payment of rent.

It is important to know that in addition to late fees, you may also be evicted for late-payment of rent. Eviction can happen for a number of reasons; evictions are not limited only to situations where tenants are not paying rent.

## **VI. Evictions**

Evictions are referred to as “Forcible Entry and Detainer” provisions in Colorado. Generally speaking, you cannot be evicted from your home unless or until a court determines that you have broken your lease in some fashion.

If you are served with a notice to quit, the notice to quit does not mean you are evicted. A notice to quit means you are in the process of being evicted. However, your landlord must go to court in most circumstances to accomplish a formal eviction. Your landlord cannot evict you themselves; this is called self-help, and it is against the law. The landlord must ask for the court’s, and then the sheriff’s help to remove you from the residence.

However, if you remain in the home after the notice to quit has been served on you, and the time on the notice passes, you will likely be incurring additional liability (and expense) for yourself by doing so. If you intend to fight the eviction process, it is worth knowing ahead of time that if your landlord gets an attorney, and you lose the case, you will likely have to pay your landlord for whatever you may owe them for rent, and for damages, as well as for their lawyers.

There is a substantial risk to remaining in a home from which you are being evicted, economically speaking. If you intend to remain in the home, you should speak with an attorney, to ensure that you are not “digging a deeper hole” by staying in possession of the residence.

## **VII. Conclusion**

Landlord/tenant law is a complex area of law, mainly because no two cases are ever the same. If you are entering into a new lease, continuing your old lease, breaking your lease, or being evicted from your home, at the very least, you should do as much research as is possible, and check the statutes at the link at the beginning of this document. If you feel as though you cannot handle the matter on your own, many attorneys in the area will provide free or low cost consultations, to at least give you an idea of the issues you are facing, and how to navigate them.

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