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Warranty of Habitability – Colorado updates to current law [Effective September 1, 2008]

Changes to Colorado Revised Statutes (C.R.S.) Title 13 Article 40 – the Forcible Entry and Detainer Statute

Section 13-40-111: the summons must now state that if “failure to make a repair” is your defense to eviction for non-payment of rent, the rent must be placed with the court at the time you file an answer (you can deduct your expense caused by the landlord’s failure to repair). If you do not make payment at the time you file your answer your answer will be refused.

Section 13-40-123: The collection of attorney’s fees is now dependent on whether it is in the residential contract. If there is no provision, then neither party will be entitled to attorney’s fees. If a lease provision provides for attorneys fees for the landlord only, the clause will apply to both the landlord and the tenant.

Changes to C.R.S. Title 38 Article 12 – Landlords and Tenants (now has mobile home statute and security deposit statute)

COMPLETELY NEW SECTION C.R.S. 38-12-501, Obligation to maintain residential premises, unlawful removal

Section 38-12-503: Warranty of Habitability: In all residential leases the landlord is deemed to warrant (promise) the premises are fit for human habitation. This warranty is breached by the landlord when the premises are in a condition that is materially dangerous or hazardous to the tenant’s life, health or safety. Where the tenant believes this warranty has been breached, the tenant is required to give written notice to the landlord describing the condition, and allow the landlord a reasonable time to cure (fix) the problem.

Where the condition is caused by the tenant, the tenant’s guests or invitees, the condition is not a breach by the landlord.

If the tenant is a victim of domestic violence, it is not misconduct on their part, where the condition on the premises is a result of such violence, and the tenant

gives the landlord written notice of the abuse and the resulting condition. (With police reports)

The landlord may move the tenant to another, comparable unit, as a means of fixing the problem, if the landlord pays the reasonable costs, actually incurred by the tenant, due to the move.

Section 38-12-504: Tenant's Maintenance of Premises: Tenants are responsible for maintaining their unit in a reasonably clean and safe manner. This means the tenant must comply with building, health and housing codes affecting health and safety; keep their unit reasonably clean and sanitary; dispose of garbage and other waste in a safe, sanitary and legally compliant manner; use all electrical, plumbing, heating, etc. in a reasonable manner; refrain from disturbing other tenant's peaceful enjoyment of their own units; and promptly notify the landlord of any condition which has caused the premises to be uninhabitable.

Section 38-12-505: Uninhabitable residential premises: When a landlord fails to maintain any of the following, the warranty of habitability has been breached, and the tenant must promptly provide the landlord with written notice of the condition.

- (a) Waterproofing and weather protection of the roof and exterior walls, including windows and doors must be maintained in good working order,
- (b) Plumbing or gas facilities must conform to the law in effect at the time of installation, and be maintained in good working order,
- (c) Running water and reasonable amounts of hot water must be available, furnished to the appropriate fixtures and connected to a sewage disposal system approved under applicable law,
- (d) Functioning heating facilities which conform to applicable law, maintained in good working order,
- (e) Electrical lighting, with wiring and equipment which conform to applicable law at the time of the installation, maintained in good working order.
- (f) Common areas and areas under the control of the landlord must be kept reasonably clean, sanitary and free from debris, filth, rubbish and garbage, including the appropriate extermination of the infestation of rodents and vermin.
- (g) The appropriate extermination of the infestation of rodents and vermin through out the premises must also be maintained,
- (h) Adequate number of receptacles for garbage maintained in good repair.

- (i) Floor, stairways and railings maintained in good repair
- (j) Locks on all exterior doors and windows designed to be opened
- (k) Compliance with all building and housing codes, which if violated, would result in a condition dangerous to life, health and safety. (The tenant must notify the local housing authority of the violation).

A deficiency in the common areas is only a breach of the warranty of habitability to a tenant if it materially limits the tenant's use of their own dwelling unit.

All units, prior to being leased and through out the tenancy, must meet the above requirements.

Section 38 -12-506: Opt-Out: If the leased unit is within a mobile home park, in a building which contains four or fewer units sharing common walls or located on the same property (owned by the same owner), or is a single-family unit, the duties of your landlord relating to habitability may be different than the rule stated above. If the tenant is leasing one of the above mentioned properties the tenant can, by written agreement, take responsibility for specific repairs, alterations, etc, if:

- (a) The agreement is contained in a separate writing, made in good faith, supported by consideration, and signed by both parties;
- (b) Is not relating to premises for which the landlord receives government subsidies;
- (c) Is not for the purpose of curing the landlord's inability to provide habitable premises;
- (d) Does not affect the landlord's obligations to other tenants;

If the rental agreement is for a single-family dwelling for which the landlord does not receive government subsidies, the tenant can agree to take responsibility for repairs, alterations, etc., which are for the purpose of curing the landlord's inability to provide habitable premises:

- (a) If the tenant has the skills to perform such work/ repairs
- (b) The tenant assumes the obligations of the landlord regarding habitability relating to the specific characteristic provided for in the written agreement only,

- (c) And where the tenant makes such an assumption of the obligation, the lack of that specific characteristic will not make the premises uninhabitable.

38-12-507: Tenant's Remedies for the breach of the warranty of habitability:
Where the landlord has breached the warranty of habitability,

- (1) The tenant must provide the landlord with written notice specifically describing the condition, and allowing "a reasonable time" for the landlord to fix the problem.
- (2) If the problem can be fixed by remedial repairs, the payment of damages or otherwise, and the landlord adequately fixes the problem within a reasonable time after receipt of the written notice, the tenant cannot terminate the rental agreement.
- (3) If the tenant decides to terminate the lease he must give a 2nd written notice. The date of moving must be between 10 and 30 days of receipt of written notice to the landlord. The tenant may terminate the rental agreement by moving out and returning the keys to the unit, if it is NOT fixed within 5 days after this notice.
- (4) If the landlord serves the tenant with a notice of eviction for nonpayment of rent, and the tenant wants to assert a defense of a breach of this warranty:
 - a. The tenant must pay into the registry of the court, all the rent owed minus the expenses incurred due to the breach at the time the answer is filed.
 - b. If rent is not paid into the court at this time, the tenant will be in default.
 - c. If there is a provision in the rental agreement providing for attorneys fees for either party, the prevailing party will be entitled to such fees. If there is no provision, neither party is entitled to fees.
 - d. The tenant may assert this defense if they receive a notice of eviction nonpayment of rent only. If the action by the landlord is for any other reason, this defense is unavailable to the tenant.
- (5) The tenant may also pursue their own court action for damages directly arising from the breach of the warranty of habitability, which may include reduction in the fair rental value of the unit, or other, in any court of competent jurisdiction.
- (6) The tenant cannot recover from the landlord, if the tenant prevented the landlord from fixing the problem.
- (7) If the condition is due to another tenant or third party not, under the control of the landlord, and the landlord has taken reasonable steps to fix the problem, the tenant's only remedy is to terminate the rental agreement. This requires the notice of #3 above.