

## LEASES

A written lease should protect both the landlord and the tenant. Most leases are either of six month or one *year* duration. A standard lease form can be obtained from a book or stationery store. You can usually add special provisions to these forms to fit your special lease problems or needs.

1. The least amount of problems will arise if both parties know and understand the terms of the lease. The landlord should explain these terms so that the tenant clearly understands them. If any portion of the lease is to be altered, both the landlord and the tenant should initial the change.

2. Both landlord and tenant should agree upon a "subletting" provision in the lease.

3. Some leases specify that the security deposit can be retained by the landlord if cleaning needs to be done by the landlord after the tenant vacates. In such cases both parties must be aware of the Colorado Security Deposit statute, which states that, "no security deposit shall be retained to cover normal wear and tear." It also defines "normal wear and tear". Furthermore, this law states that if any provision of this statute for the benefit of the tenant is waived by the tenant in the lease or orally, it "shall be deemed to be against public policy and shall be void." (C.R.S. 1973, 38-12-102, 103). It remains for the court to determine from the merits and facts of each individual case as to whether the "cleaning" performed by the landlord was for purposes beyond "normal wear and tear."

4. To avoid other common disputes the lease should contain provisions setting forth who is responsible for: a. *All* utilities. b. Repairs on appliances, plumbing, heating, etc. c. Yard care, trash and snow removal, etc.

5. The lease should contain a fixed due-date for rent. If there is to be a grace period and late penalty fee, it should be specified in the lease. Any late penalty fee must be reasonable.

6. Where the landlord or tenant agrees to do any work or furnish materials connected with the premises, it should be in writing and should fix a time for completion. Also the exact amount of rent reduction due the tenant for repairs should be fixed in writing and signed by both parties at the commencement of the lease.

7. If there is no written lease, the tenant is normally holding the premises on a month to month tenancy if the rent is paid monthly. If the tenant desires protection from a rent increase or eviction without grounds, the tenant should consider having a 6 month to a year lease. However, if the tenant moves out before the end of the term of the written lease the tenant may be liable for the balance of the rent.

## **LANDLORD LIENS**

When some landlords are due money for rent, they may assert a lien against the personal property of the tenant. (C.R.S. 1973, 38-20-102). Lien actions are generally complex and can result in considerable liability for the landlord. Therefore, landlords should consult an attorney before exercising a lien.

Some judges hold the landlord lien statute invalid, unconstitutional, and have awarded damages to the tenant. However, until the Supreme Court decides the issue, many judges may enforce the statute.

1. According to Colorado Statutes, the landlord of an apartment or room rented for housekeeping purposes, has a lien on the personal property of the tenant except beds, bedding, small kitchen appliances, clothes, documents, and personal effects. C.R.S. 1973, 38-20-102(3) (a).

2. The statute also provides that the "keeper" of a hotel, inn, boardinghouse, etc. who rents "temporary shelter to transient guests" has a lien on all personal property except the car of a guest for unpaid rent plus costs. C.R.S. 1973, 38-20-102(3) (b).

3. The landlord must obtain the property by "peaceable" means. If the tenant or the tenant's representative is present and objects, it is not "peaceable." C.R.S. 1973, 38-20-102, (3) (c)

4. The landlord must follow legal procedure for lien foreclosure precisely as defined by statute or risk both losing the lien rights and entitling the tenant to damages.

## **LOCKOUT BY LANDLORD**

Under most circumstances, a landlord should not "lockout" a tenant for any reason without a court order. Whether or not the tenant has broken the lease, the landlord may be held responsible for interfering with the tenant's right to "peaceable possession" until legal court eviction.

The police may or may not intervene in a "lockout" in order to keep the peace. Although a tenant who has been illegally locked out may have a legal right to reenter with minimum damage to the locks, doing so may result in police involvement. A landlord who illegally locks out a tenant risks being sued for damages and loses the right to exercise a lien. (See Landlord Liens.)

## **MOBILE HOMES**

Regulations concerning mobile homes, see Mobile Home Park Landlord-Tenant Act. C.R.S. 1973, 38-12-201).

## EVICTIIONS

The landlord may evict a Tenant for:

1. **FAILURE TO PAY RENT ON TIME.** The landlord must first give the tenant a written notice demanding that the tenant either pay the rent or move out within three days. (C.R.S. 1973,m 13-40-104(1) (d)).
  - a. If the tenant fails to pay or move, the landlord may, on the 4th day, commence an eviction proceeding in County Court (C.R.S. 1973, 13-40-110).
  - b. 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 files an answer contesting the eviction, the case will be set for trial within approximately 5 days.
  - c. 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 of the lease, the tenant may be evicted in much the same manner as nonpayment of rent. (C.R.S. 1973, 1340-104(1)(e)).
  - a. In such cases, the landlord obtains the proper form which the landlord serves upon the tenant requesting the tenant to leave by a fixed time, specifying the grounds. Even if the tenant remedies the situation, the landlord may still proceed to evict the tenant.
  - b. If the tenant fails to leave, the landlord must follow the same proceedings as above.
  
3. **NO REASON.** If a landlord wants to evict a tenant at the end of the lease period and follows the correct legal procedure, the landlord can do so without giving a reason. The landlord must give the tenant proper notice to leave.
  - a. Notice must be served on the tenant not less than the required number of days before the end of the lease period. Unless the lease provides for a longer period, the required number of days is as follows:
    1. Lease period of 1 year or longer: 3 months
    2. Lease period of 6 months up to 1 year: 1 month
    3. Lease period of 1 month up to 6 months: 10 days
    4. Lease period of 1 week up to 1 month: 3 days
    5. Lease period of less than 1 week: 1 day.

The length of the lease period is determined from the language of the

lease, and if the lease doesn't specify the length of the lease period, it will probably be determined by the frequency of rental payments. For example, if rent is due each month, it is a month to month tenancy or lease. The law is unclear in situations where the original lease has expired. Some courts apply the notice required by the expired lease while others base the notice period on the lease period determined from the rental payments.

- b. If the tenant fails to leave, the landlord, again, must follow the procedure set forth in Section 1, above.

## **RENT HIKES**

If a landlord wants to raise the rent, the tenant must be given as much advance notice as is required for eviction for no reason.

## **TENANT MOVING OUT**

A tenant must give the landlord notice of the tenant's intent to vacate the premises as many days in advance as the eviction for no reason or as stated in the lease.

## **TRESPASS BY LANDLORD**

The tenant has the right to peaceful enjoyment of the property, but this right can be modified by the terms of the lease. Unless the lease provides otherwise, generally the landlord has no right to enter the property without permission of the tenant except: to demand payment of rent; to assert the landlord's lien; or make emergency repairs. A tenant can sue a landlord for violating the tenant's rights, but this is difficult and should be done with the aid of an attorney.

## **MOVE-IN SHEET**

Before moving in it is important for the landlord and tenant to examine the condition of the premises closely. All faulty conditions-defects, cracks, chips, leaky faucets, dirty walls, carpet and tile, everything! - should be written down on duplicate copies and signed by both parties. Such precautions will save untold arguments pertaining to refunding the damage deposit.

## **DAMAGE DEPOSITS**

Security (damage) deposits may be used to pay rent if the tenant skips, or fails to pay for any damages "beyond normal wear and tear" to the premises (See discussion under Leases 3.)

**REQUIREMENTS:**

1. The landlord must return the damage deposit or send an itemized list of damages and costs of repair to the tenant's Last known address within 30 days after the tenant vacates. The lease may extend this time period up to 60 days. (C.R.S.1973, 38-12-103).
2. If the landlord fails to send this letter within 30 days, the landlord loses all right to the damage deposit, even though there are damages. (C.R.S. 1973, 38-12-103).
3. If the landlord withholds the damage deposit in violation of Section 38-12-103, the landlord may be liable for triple the amount *wrongfully* and *willfully* withheld plus attorney fees and costs.
  - a. In this event the tenant must, first, send the landlord a letter, stating the tenant will sue for triple recovery if the damage deposit is not received within 7 days. After this period has elapsed, the tenant may commence a damage deposit suit.
  - b. In each county, a person may obtain information to start the suit by calling the county's court clerk's office. The suite should be filed in the county where the landlord or his/her agent has offices. An attorney is advisable if you can afford one. If the amount does not exceed \$1,000, the suite can be heard in small claims court where both sides appear without attorneys.

\* current cost for services must be confirmed with the court.

**HELPFUL NUMBERS**

Summit County Court                                    970 453 2272

Summit County Health Department            970 668 4070

Check government pages in phone directory where property is located for County and City building departments.