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# LANDLORD/TENANT LAW

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## 1. A FEW WORDS ABOUT THIS BOOKLET

This pamphlet is intended to provide a brief overview of the law governing landlord/tenant law in the State of Colorado. If you need more detailed information we encourage you to discuss your specific situation with a legal professional. The attorneys in the base legal office **cannot represent** you in court. There are various Legal Referral Services in Colorado that can help you in your search for a civilian lawyer. Please refer to last page of this pamphlet for *Helpful Contact Information*.

## 2. PRE MOVE-IN

Both the tenant and landlord should review the lease together to make sure they agree to the terms of the lease. The tenant should walk-thru and document the condition of the premises on move-in day. It is a good idea to use a checklist, take pictures, videotape or bring a friend as a witness. The tenant should then follow up by writing a letter to the landlord, preferably by certified mail, indicating the conditions on the day of move-in. The landlord is not entitled to deductions of the security deposit for pre-lease walk-thru damage.

## 3. SECURITY DEPOSITS

A security deposit is any advance or deposit, regardless of its denomination, to secure performance of the rental agreement. It is given in consideration for promising to rent to you, and it is held as a security against any abnormal wear and tear. Therefore, it cannot be used for the normal deterioration of a residence, but can be used for any damages resulting from negligence, carelessness, accident, or abuse of the property.

*The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibility vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.*

There are special rules that apply to security deposits for mobile homes. The maximum security deposit for a single wide home is one month's rent. For a multi-wide home, the maximum security deposit is two months' rent. Your security deposit must be held in a trust account by the landlord, and cannot be mixed with his funds. However, your landlord may keep the interest from the account as compensation for serving as trustee.

#### **4. RETURNING THE SECURITY DEPOSIT**

When your tenancy has ended the landlord is obligated to return your security deposit within 30 days unless the lease agreement specifies a longer period of time. Under Colorado law, this period cannot extend beyond 60 days. If your landlord retains any portion of the security deposit, he is obligated to provide you with a written statement listing the exact reasons why your security deposit was not returned in full. The statement may be mailed to your last known address. If the statement is not provided, then the landlord forfeits all rights to any portion of the security deposit. However, the landlord retains the right to sue for actual damages. (*See, Turner v. Lyon*, 189 Colo. 234, 539 P.2d 1241 (1975)).

If the security deposit is not returned in full by the deadline, if the written statement is not provided and a portion of the deposit is withheld, or if you wish to contest the retention of any funds, the tenant must give the landlord notice of an intention to file legal proceedings at least seven days in advance. In this action the landlord has the burden of proving that keeping the security deposit was not wrongful.

#### **5. TRANSFEREE LIABILITY**

If your present landlord sells the property to another individual or company, the new landlord is liable for your security deposit if it has been transferred. Your old landlord is relieved when transfer is complete and the tenant has been notified.

#### **6. PENALTIES**

Should you seek to file suit to reclaim your security deposit, triple the amount wrongfully withheld may be available as a remedy. The treble damages are only available for "willful" violations of the statute. To avoid liability for treble damages, the landlord may return the full deposit within the seven days after tenant has given notice of intent to sue. Otherwise, the landlord must show that actions were in good faith.

Any actions for treble damages (see *infra*) must be brought within one year. However, actions for the actual security deposit and attorney fees may be brought within six-years.

In determining whether the landlord acted in good faith, "The discrepancy between the amount [of a security deposit] retained and the amount of actual damages proved by landlord is important evidence of his good faith." *Guzman v. McDonald*, 194 Colo. 160, 162 570 P.2d 532, 533 (1977).

## **7. A LEASE IS A CONTRACT**

A lease is a contract between the tenant and the landlord and is in effect for the time period specified in the lease. If either party breaches (breaks) the lease, he is still liable for what he agreed to under the terms of the lease. For example, if the tenant moves out early, he is still liable for the rent for the remainder of the lease. However, the landlord has a duty to "mitigate" his damages by using reasonable efforts to rent to another tenant to reduce the landlord's losses. If the tenant stops paying rent, the lease will often allow the landlord to terminate the lease and often allows him to keep any advance rents and/or security deposits.

If a tenant is having problems with the residence (unsanitary conditions, noisy neighbors, hazardous conditions, etc.), the tenant should document these problems in writing and send a copy of the documentation certified mail/return receipt requested to the landlord. If you eventually decide to break the lease, this documentation will be invaluable if the landlord brings a court case. The more evidence you have that you told the landlord about the problems and that the landlord failed to correct them, the stronger your argument will be for being allowed out of the lease. It may come down to your word against your landlord's and the better prepared you are, the easier it will be for you.

With the exception of a few items, which cannot be waived in the contract, such as security deposits, what you can and cannot do as a tenant or a landlord will be governed by the terms of the contract, which you have entered. If you seek legal advice regarding the terms of your lease, be sure to bring a complete copy of it (including all addendum) with you so that the attorney can review it. An attorney will be able to tell you very little without having a copy of the lease.

As the lease is a contract, you may have room to bargain over some of the terms with the landlord or tenant. A tenant at a large apartment complex will have more difficulty doing so as the complex management will likely want all form contracts to be the same and enforced evenly and efficiently. However, if one or more provisions particularly cause concern to you, do not hesitate to raise the issue and seek an amendment of the terms. A landlord renting out a house that he or she owns, or a tenant seeking to rent such a property, will likely have greater input on the terms of the lease. These situations offer the greatest opportunity for negotiating. However, they do not have the name of a local apartment complex or management agent behind them who will be on the hook should a dispute arise. Whatever your decision, simply know that you are binding yourself to a contract when you sign a lease.

## **8. YOUR RIGHTS UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)**

Section 535 of the Servicemembers Civil Relief Act (SCRA) gives you the right to terminate a lease if, after signing the lease, you entered military service, received military orders for a PCS move, to deploy, or as an individual in support of a military operation with a military unit for a period of not less than 90 days. You must provide written notice to your landlord along with your orders or a commander statement. The lease will then terminate 30 days after the first date on which the next rental payment is due, meaning you must still pay for the next month's rent. Section 535 and 538 extends this right to non-military spouses who are co-tenants on your lease, or a sole signatory, thereby freeing both you and your spouse from the obligations under the lease.

Be aware that the landlord may not impose an early termination charge, but any other obligations and liabilities of tenant in accordance with the terms of the lease, including reasonable charges to the tenant for excess wear, that are due and unpaid at the time of termination of the lease shall be paid by the tenant. Also, even in early lease terminations, SCRA section 535 gives you the right to your security deposit return. Consider using the following language in a letter to your landlord regarding the security deposit:

“Please note that violations of the SCRA, including unauthorized withholding of security deposits are enforced by the Department of Justice. An excerpt from the SCRA is attached (encl. 1), as well as copy of a settlement resulting from a lawsuit brought by the Department of Justice against a landlord to enforce the Service member Civil Relief Act (U.S. v. Akhavan- U.S. District Court, eastern District of Virginia, Civil No. 1:09CV1077, 9/25/09)

If you do not pay your last rent (the next month’s rent after giving proper notice to the landlord), the landlord can bring a "forcible entry and detainer" action (eviction) against you in district court, after giving you three days notice in writing. The landlord can serve this lawsuit on you by posting a summons and complaint on the premises and mailing you a copy. Section 531 of the SCRA also protects you from being evicted during a period of military service. However, the residence must be occupied or intended to be occupied as a residence and the rent must be less than \$2,615.16. If you meet these requirements, you are facing eviction, and your ability to pay rent is materially affected by military service, the court can delay the proceedings or adjust the rent to accommodate the interests of all parties.

## **9. MILITARY CLAUSE**

Although there is no need for a “military clause” in most leases, it can be useful and should be included in every lease to supplement and support your rights under the SCRA. This goes for tenants and landlords. Tenants want this clause in a lease to enable them to terminate the lease before its expiration date (usually with 30 days notice) preferably without a penalty. While similar to your rights under the SCRA, a military clause can be tailored to better fit your needs. Remember, this is a contract you are signing. Try to negotiate the terms with the landlord, or seek legal advice if you are uncertain of the language.

Members who are landlords should also be prepared to make use of military clauses. If you own a residential premises in an area which you are going to PCS to, you may want to live there yourself rather than find other living arrangements and continue renting out your property. If this is a possibility, you should include a military clause allowing you to terminate the lease with 30 days written notice to the tenant.

## **10. SAMPLE MILITARY CLAUSE**

“It is expressly agreed that if the lessee herein should receive official orders relieving him/her from station in the Colorado Springs area, or retiring or relieving him/her from active duty in the military service, or assigning lessee public quarters, the lessee may terminate this lease upon written notice of his/her intention to do so. Termination shall become effective thirty (30) days after the date of the service of the notice upon the lessor and if the date of such terminations shall fall between the days on which rent is due, the rent will be prorated accordingly. Tenant shall suffer no penalty for the exercise of this termination.”

## **11. WHAT TO DO ABOUT A GAS LEAK IN YOUR PREMISES**

If gas service company personnel become aware of any hazardous condition involving gas equipment, Colorado law requires them to notify the customer of record at that address in writing of the hazard and to follow company procedure in dealing with the hazard. The notification should state the potential nature of the hazard (i.e. fire hazard, hazard to life, health, property or public welfare) and the possible cause of the hazard.

If the tenant is the customer notified of the hazard, he must immediately inform the landlord or his agent in writing. The landlord has 72 hours (excluding Saturday, Sunday or legal holiday) from his receipt of the notice to have it repaired by a professional. If these repairs are not made and the hazard remains, the tenant has the option of vacating the premises. Once the tenant vacates, the lease becomes null and void and all rights and future obligations under the lease terminate. The tenant can demand the immediate return of the security deposit. The landlord has until 72 hours after the tenant vacates to return all or part of the deposit.

The following organizations may assist you with issues concerning health and safety:

Department of Public Health and Environment: (303) 691-7700

# SAMPLE LETTER

DATE

NAME OF CREDITOR  
ADDRESS  
CITY, STATE, ZIP

RE: LEASE DATED \_\_\_\_\_ FOR PREMISES AT \_\_\_\_\_.

Dear Sir or Madam:

This is my notice to quit the leased premises on \_\_\_\_\_(date). This notice is made pursuant to 50 U.S.C. App. § 535 of the Servicemembers' Civil Relief Act (the "SCRA") as legislated by Congress and signed into law in December 2003.

Per the enclosure, I am required to deploy in support of Operation \_\_\_\_\_ for ninety (90) days or longer. The SCRA requires that the subject lease be terminated no later than 30 days from the date of the next rental due date. The next rental due date on this lease is \_\_\_\_\_ (date). Therefore, according to the SCRA this lease shall terminate on \_\_\_\_\_(date).

All prorated future rents paid must be returned to me within thirty (30) days of the termination date of the lease. You may forward this refund to \_\_\_\_\_ at \_\_\_\_\_(address).

Should you have any questions, you may contact me at \_\_\_\_\_. (May add contact info. for dependent or agent holding tenant's power of attorney).

Thank you for your understanding and support in this matter.

Sincerely,

John Doe, Rank, USAF

**\*\* ENCLOSE A COPY OF YOUR ORDERS THAT (1) ACTIVATED YOU AS A RESERVIST OR (2) BROUGHT YOU FROM CIVILIAN LIFE TO ACTIVE DUTY OR (3) PERMANENTLY CHANGE YOUR CURRENT DUTY STATION OR (4) ORDER YOUR DEPLOYMENT FOR 90 DAYS OR MORE.**

## **HELPFUL CONTACT INFORMATION**

El Paso County Bar Association's Lawyer Referral Service: (719) 636-1532

Colorado Legal Services: (303) 837-1321

Legal Aid Foundation of Colorado: (303) 863-9544

Metropolitan Lawyer Referral Service: (303) 831-8000

Denver Bar Association: (303) 831-1309

### Other Helpful Websites:

Military Tenants: Federal Law Provides Relief, ABA DIALOGUE- Winter 2006

<http://www.abanet.org/legalservices/dialogue/dialarchive.html>

JA 265, Consumer Law Deskbook, Chapter 12 (Jan 04)

<http://www.jagcnet.army.mil/legal>

HierosGamos, Landlord & Tenant:

[www.hg.org/landlord.html](http://www.hg.org/landlord.html)

Also:

<https://aflegalassistance.law.af.mil>

[http://www.denbar.org/index.cfm/ID/1102/DBA/For\\_the\\_Public](http://www.denbar.org/index.cfm/ID/1102/DBA/For_the_Public)

<http://coloradolegalservices.org/co/homepage.html>

<http://www.legalaidfoundation.org/legal-services>