

Security Deposits. A Security Deposit (sometimes called damage deposit) is normally a one-time charge to help guarantee that a residential tenant will not “skip out on the rent” or utility charges, or leave the premises in a damaged condition. It is held by Landlord, without payment of interest (except as provided by local law) until Tenant has moved out, having paid all of the rent and other lawful charges, and leaving the premises in the same condition as when Tenant first occupied it, except for normal wear and tear.

Definition. It is defined by statute [CRS 38-12-102(2)] as “any advance or deposit of money, regardless of its denomination, the primary function of which is to secure the performance of a rental agreement for residential premises or any part thereof.”

Time To Return/Account. State law requires Landlord to return or account for retention of the deposit, within one month (or 60 days if so provided in a lease) “after the termination of a lease or surrender and acceptance of the premises, whichever occurs last.”

Landlord may withhold that portion of the security deposit, to cover nonpayment of rent and/or utility charges, abandonment of the premises, repair work or cleaning contracted for by the Tenant, provided a statement of account, together with the balance (if any) of the deposit is, within the above time period, mailed, regular mail, to Tenant’s last known address.

“Normal Wear and Tear.” Landlord may not charge for “normal wear and tear,” which is defined, by law as “that deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse.”

Failure To Return or Account. If Landlord fails/refuses to return the deposit or otherwise account for charges against it in writing, within the time period, above, Landlord loses all rights to the deposit. Tenant should then send a letter, (it is strongly recommended that you use certified mail return receipt requested) to the Landlord demanding that he do so, giving him seven (7) days to comply.

After the seven days has passed, if Landlord still ignores this request, tenant may sue Landlord in Court, and State law allows him to collect triple the amount of deposit wrongfully withheld, if a Court so finds.

Landlord has the burden, in Court, of showing that his refusal to refund or otherwise account for the deposit, was not wrongful or willful. Otherwise, Tenant may recover triple the amount wrongfully withheld, together with costs and such attorney fees as the Court may allow.

Hazardous Gas Condition. If any hazard to gas appliance, piping or other gas equipment exists, and the local gas and/or Landlord may be given notice of defect and compelled to comply with the gas company’s procedures. If Tenant gets the notice, he/she must notify Landlord immediately.

72 Hours To Correct. Landlord must repair the condition, within 72 hours (not counting weekends or legal holidays) after receiving notification. Repairs must be done by a “professional” – one licensed or certified by state or local laws.

Failure To Make Repairs. Failure to repair, within the 72 hour period, permits tenant to (1) terminate the tenancy and move out, and (2) demand return of double the security deposit within 72 hours after vacating the property.

JEFFCO ACTION CENTER, INC. is a private, non-profit organization founded in 1968 to serve Jefferson County residents in need of basic emergency assistance. Services include a full continuum of help ranging from food, clothing, emergency housing, and free medical care to limited financial help with rent deposits and utilities. Funding for Jeffco Action Center is primarily from private donations. For more information, call 303-237-7704.

Jeffco Action Center, Inc.

Tenant/Landlord Disputes

Some Information to Help
Avoid or Solve Problems

EVICCTIONS AND SECURITY DEPOSITS



Tenant/Landlord Counseling Program
303-237-0230 ♦ 9:00am – 3:00pm M-F

*This pamphlet should not be used as a
substitute for seeking needed advice
from Qualified Attorneys or Advisors.*

Lease Evictions. Where there is a lease, the rights of the parties are as provided in the lease, which is considered a legal contract, binding all parties. Accordingly, all notices provided for in the lease are governed by the lease and must be observed. Thus, Tenant and Landlord should always READ AND UNDERSTAND the lease terms and Tenant should ask to have a signed copy.

No notice to quit is necessary from or to a tenant whose term ends at a date certain by terms of the lease unless the lease requires it.

However, during the lease term, most leases do provide for a 3-day notice of eviction for non-payment of rent, or to compel compliance with lease provisions. Written notice is required in all cases. Although the law does not prescribe any particular form, blank forms are available and may be purchased at most stationery stores.

10-Day Notice. In month-to-month tenancy (No lease), Landlord may evict Tenant at any time for any reason, regardless of rent status, upon giving a 10-day, signed, notice in writing to do so. The notice must be served (given) not less than 10-days immediately prior to the next regular rent payment due date. This notice is preliminary to filing a Court eviction action.

3-Day Notice for Past Due Rent. In the event Tenant is behind in rent, Landlord can sign and serve a 3-day notice, at any time the rent is in arrears, requiring the back rent to be paid within 3 days or the tenancy will be terminated. This notice can be combined with the notice, below, in a single form, and is a preliminary step to filing a court action in eviction. Normally, such combination notice calls for either payment of rent or compliance with lease, but both may be included.

3-Day Demand for Compliance of Lease. Landlord can sign and serve a notice demand, at any time, that violated provisions in a lease or rental agreement be corrected within 3 days, or the tenancy will be terminated. This notice, too, can be combined with the eviction notice, above, and is also a preliminary step to filing a court action in eviction.

Computing Time of Notices. In computing any of the above period of days, the first day is excluded and the last day is included unless it falls on a weekend or legal holiday, in which case it is extended to the next business day. [C.R.S. 2-4-108]

Service of Notice. The notice can be handed to Tenant or left with a member of Tenant's family, over the age of 15 years, or it can be "posted" (fastened – usually with scotch tape) to the tenant's door or in a conspicuous place. The notice must be written, signed, but need not be notarized. This notice, as well as other notices described above is preliminary and essential to filing a court action in eviction and does not constitute immediate eviction.

Notice Signed by Landlord's Agent/Attorney. Any of the above notices must be signed by Landlord, or by his agent, management company, or attorney, but need not be notarized.

THE NEXT STEP, COURT EVICTION

Filing Complaint – Issuance of Summons. At the expiration of the time stated in the above notice, Landlord files with the County Court, his Affidavit and Complaint, stating the reasons for eviction, and demanding the back rent money and/or citing the violations of lease or rental agreement prompting termination of the tenancy. The Clerk of the County Court; then, will issue a SUMMONS, naming the parties to the lawsuit, and setting the RETURN DATE AND TIME, when both parties must be present in court. This date must be not less than 5 nor more than 10 days later. The Landlord, then, must deliver the Summons, together with a copy of the Complaint and Affidavit to the sheriff or other non-interested party over the age of 18 years, to make service of the same upon the tenant.

Service of Summons. The Summons together with a copy of the Complaint, may be served either by handing to Tenant(s) or leaving it with a member of his/her family over the age of 18 years, or "posting" (fastening) a copy in a "conspicuous place" (usually the door). If the latter method is used, the Landlord must further MAIL a copy of the Summons to the Tenant(s) no later than one (1) day after filing the action. If the services of the sheriff are used in serving the summons, it is

Customary that a member of the sheriff's office make ONE trip to the Tenant's residence – either to make personal service or post the summons. A signed "Return of Service" is then filed. The Summons must be served no less than 5 days prior to the Court appearance date.

Answer or Default. If Tenant feels he/she has a good cause, Tenant may file an ANSWER or even a COUNTERCLAIM in the suit. Current filing fees must be paid to the Court. The above Answer must be filed with the Court at or prior to the Court appearance date in order to prevent a default judgment.

COURT HEARING/TRIAL

Judgment. If the Court rules in favor of Landlord, or if Tenant defaults in appearance and answer, it enters a judgment, in favor of Landlord, being a money judgment for back rent and damages in event personal service was obtained, as well as a judgment for possession of the premises. A money judgment, especially, can result in unfavorable credit history for the Tenant. Tenant can also, in some case, be assessed court costs and attorney fees incurred by the Landlord.

Writ of Restitution. No earlier than 48 hours after entry of judgment, Landlord can deliver to sheriff a Writ of Restitution, requiring the physical eviction/removal of Tenant and Tenant's furnishings.

Service of Writ of Restitution. The sheriff is obligated, by law, to serve the Writ of Restitution upon the Tenant. It is the usual custom of most Sheriff's offices to make one "courtesy" call upon Tenant, advising that he is serving a Writ of Restitution, and advising he will return, usually the following day, to "stand by" while Landlord's agents remove the Tenant's furniture and goods from the premises and put it near the street. Only at this time and in this manner, can a Tenant be physically ejected.