

LANDLORD/TENANT

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SPACE BASE DELTA 2 LEGAL OFFICE (BUCKLEY SFB)



**510 S. ASPEN STREET
BUCKLEY SFB, COLORADO 80011
(720) 847-6444
DSN 847-6444**



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 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.

BASICS OF COLORADO LANDLORD/TENANT LAW

STATUTES

Colorado Security Deposit Act: Colo. Rev. Stat. 1973 §§38-12-101 to 103 (1982 & Supp. 1990).

Colorado Mobile Home Park Act: Colo. Rev. Stat. §§38-12-200.1 to 217.

Security Deposits: Nonmobile Homes: Colo. Rev. Stat. §§38-12-101 to 103.

Mobile Homes: Colo. Rev. Stat. §§38-12-207 & 209.

The statute that addresses your particular situation should be individually consulted as the results may vary. The information below is provided as a general guide to assist you in ascertaining your landlord/tenant rights.

PREREQUISITES

The property in question must be a residential premises. It cannot be used for your business or a commercial purpose.

SECURITY DEPOSITS

Any advance or deposit, regardless of its denomination, to secure performance of the rental agreement.

For Nonmobile Homes

Maximum: Statute does not address
Interest: Statute does not address
Deposited: Statute does not address
Commingling: Statute does not address

For Mobile Homes

Maximum: Single 1 month rent, Multi-Wide 2 months rent
Interest: Statute does not address
Deposited: Must be deposited by landlord in a trust account with landlord as trustee
Commingling: Cannot commingle, but landlord may keep interest and profits from account as compensation for services as trustee

LANDLORD REQUIREMENTS (SECURITY DEPOSITS)

1. Landlord has burden of proof that his retention was not wrongful.

2. Landlord must give written explanation of reasons why any portion of the security deposit is being retained. Such notice must be delivered together with the remaining security deposit (security deposit paid - amount retained). If landlord mails to your last known address, he or she has complied with the statute.

3. Landlord may not retain any part of the security deposit for "normal wear and tear" which is defined as follows: that deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant or members of his household, or their invitees or guests.

4. Nothing in the statute prohibits a landlord from retaining part or all of the security deposit to cover nonpayment of rent, abandonment of the premises, or nonpayment of utility charges, repair work, or cleaning contracted for by the tenant.

TIME REQUIREMENTS

Landlord must give a tenant the written explanation/refund required within one month (or up to sixty days if so agreed in the lease) after termination of the lease or vacation of the premises, whichever occurs last. If tenant objects, tenant must then give notice of intent to sue to the landlord, wait a minimum of seven days after giving such notice, and then file suit.

Actions for treble damages (see *infra*) must be brought within one year. Actions for actual deposit and attorney fees are governed by a six-year statute of limitations.

NOTIFICATION PROCEDURES

Landlord need only send the written explanation and net amount due tenant to tenant's last known address, so, from the tenant's perspective, it is imperative to keep landlord informed as to current address. Tenant should keep evidence indicating landlord knew of new address.

TRANSFEREE LIABILITY

New landlord is liable if deposit has been transferred. Old landlord is relieved when transfer is complete and tenant has been notified.

PENALTIES

Treble the amount wrongfully withheld plus attorneys' fees and costs for "willful" violation of 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, landlord must show actions were in good faith.

Evidence of landlord's 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).

The landlord forfeits all right to withhold any portion of the deposit if he fails to provide the written statement as required. However, the landlord retains the right to sue for actual damages. (*See, Turner v. Lyon*, 189 Colo. 234, 539 P.2d 1241 (1975)).

TENANT REQUIREMENTS

After expiration of the time allotted for landlord to return deposit and notice, tenant must give notice of intent to bring suit. This is a condition precedent to recover treble damages. Then, tenant must wait at least seven days to file suit.

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, *supra*, 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 advise 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.

MILITARY CLAUSE

Perhaps the most important provision which military member must make sure is included in every lease is the military clause. 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. This protects members who PCS out of the area before the lease expires on its own terms. Most of the time the landlord of a member tenant will include language which allows a termination for military purposes only if the member comes under military orders to leave the local area. This is understandable, as the landlord does not want a tenant simply deciding to move for a better housing deal in the locality.

Beware -- this may apply to on base housing as well, depending on the language in the clause. Being accepted for base housing is not the same as a PCS! You will either have to turn down base housing until your lease expires, or find another way out of your lease. Most leases contain a termination clause, which would allow you to do so, but at a substantial penalty -- usually a full month's rent. Some military clauses also require the payment of a penalty. 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.

THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

The Servicemembers Civil Relief Act (SCRA) allows a service member or dependent to lawfully terminate a pre-active duty lease under certain circumstances. If your lease contains a clause charging damages for such a termination, you may have to pay this amount. The leased premises must be used for a dwelling, professional, business, agricultural or similar purposes by the member or the member and his dependents. The lease must be entered into prior to entry into military service and the member must currently be in military service. The lease must be executed by or on behalf of the service member or dependent.

To terminate the lease, deliver written notice to the landlord (preferably by certified mail/return receipt or personal delivery) after your entry onto active duty or receipt of orders. You should request immediate termination of the lease.

The effective termination date depends on the type of lease and when you mail/deliver the notice. For month-to-month rentals, termination is effective 30 days after the first date on which the next rental payment is due. For example, if rent is due on the first of the month and notice is mailed 1 August, the next rent is due 1 September and termination is effective 30 days later. For all other leases, termination is effective on the last day of the month AFTER the month in which notice is delivered.

If rent has been paid in advance, the landlord must refund the unearned portion. If a security deposit was required, it must be refunded upon termination.

STOPPING AN EVICTION ACTION BY YOUR LANDLORD

If you do not pay your rent, 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.

The SCRA has a provision to prevent eviction of a service member or dependents for nonpayment of rent without a court order. This protection is available to dependents in their own right. To be eligible for protection, the member or the dependents of a member must occupy the premises as a dwelling and the rent must not exceed \$1200 per month. To invoke this protection, the service member should ask the court to delay the eviction action for up to three months. The court is required to grant the stay if you request it and can prove that your ability to pay was materially affected by your military service.

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:
Aurora Health & Safety (Inspections) - 303-739-7000