

Warranty of Habitability

By law, every residential lease in Colorado includes a “Warranty of Habitability”.

The Warranty of Habitability requires landlords to maintain living spaces they rent out up to some basic standards. The law requires that rental units are to be general safe and “fit for human habitation.”

What are the basic requirements under the Warrant of Habitability?

Landlord Duties

Landlords are required to make sure that their properties have:

- **Waterproofing and weather protection** that are maintained in good working order on the roof, outside walls, windows and doors
- **Plumbing or gas facilities** that are maintained in good working order and that complied with the applicable building codes when they were installed
- **Running hot and cold water** that are furnished to the appropriate fixtures in the property and are connected to the appropriate sewer system
- Functioning **heating facilities** that are in good working order and that complied with the applicable building codes when they were installed. (NOTE: There is no requirement that the landlord provide air conditioning or cooling systems of any sort)
- **Electrical lighting** that is maintained in good working order and complied with the applicable building codes at the time it was installed
- **Common Areas** (if any) that are reasonably clean, sanitary and free of trash, rubbish and debris, bugs and pests
- Appropriate **extermination** if needed to eliminate infestations of rodents or “vermin”
- An appropriate number of outdoor **trash receptacles** in good working order
- **Floors, stairways and railings** that are maintained in good working order
- **Locks or security devices** that are in good working order on all exterior doors and openable windows

- **Compliance with building, housing and health codes** applicable to the property, the violation of which would create a condition that materially interferes with the tenant's life, health or safety
- Functioning **appliances** maintained in good working order
- No **mold** associated with dampness that would interfere with health or safety of tenant.

Failure to provide anything in the above list can cause a property to be **uninhabitable** under the law.

In addition to the things listed above, landlords must make sure that the property is not "materially dangerous or hazardous to the tenant's life, health or safety"

Tenant Duties

Tenants have some duties under the Warranty of Habitability. Tenants are required to:

- Comply with their duties under local housing, health and building codes significantly affecting health and safety
- Keep the residence reasonably clean, safe and sanitary as permitted by the conditions of the unit
- Dispose of ashes, garbage and other waste in a clean, safe, sanitary and legal way
- Use electrical, plumbing, heating, AC, sanitary, elevators and other facilities and appliances in a reasonable manner
- Act in a way that does not disturb their neighbors' peaceful enjoyment of their dwelling unit
- Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the residence or allow any guest, household member or someone under their control to do so
- Promptly let their landlord know in writing about a problem that makes or would make the property uninhabitable

Since a landlord is not responsible for problems in one of their rentals caused by the tenant, that means that you need to make sure that you are not responsible for the existence of mold in your residence before taking actions to force the landlord to fix the problem. This would include running bathroom exhaust fans and wiping down

showers and not running humidifiers if they are causing mold issues.

Exceptions to the Warranty of Habitability

If the rental property is a single family home and the landlord does not receive any subsidies from the government, the landlord and a tenant with the skills to perform the work may agree IN WRITING that the tenant will be responsible for doing some (but not all) of the work that may be required to keep the property in compliance with the warranty of habitability. The written agreement must be entered into honestly and sincerely, it must be separate from the lease, and it must be signed by both the landlord and the tenant.

What should I do if my landlord is failing to maintain or repair my residence?

Your landlord does not have any duty under the Warranty of Habitability to fix your residence until they receive written notice about the repair problems. This is why it is essential that you give your landlord written notice about the details of the problem. A sample form letter for repairs is located here ([Word file](#), [PDF](#)). A sample letter for lease termination is located here ([Word file](#), [PDF](#)). The letter to your landlord must include a reasonably complete description of the problems and must give your landlord permission to enter your residence to make the repairs.

Your lease might tell you how you are supposed to deliver notices. This might include:

- sending a letter to a specific mailing address
- sending an email to a specific email address
- sending a text message to a specific phone number, or
- using an online portal of some kind.

If your lease does not tell you how to deliver a notice, you can do so by mail or by whatever written method you have used to communicate with your landlord in the past.

No matter which way you deliver the notice, it is **essential that you keep records** that the notice was delivered. If you send a letter, you should send it registered or

certified mail and keep copies of the delivery. If you use a web portal you can take screenshots of what you fill out and keep a record that the complaint was submitted. If you submit the complaint through a web portal, it is often a good idea to send another notice by mail just to make sure you are fulfilling your duties under the law.

Make sure to keep a copy of all notices, communication with your landlord, estimates and proof that notices were sent and received!

Once you give your landlord this notice, they have to start addressing the needed repairs within a specific amount of time:

- If the problem significantly interferes with your life, health, or safety, your landlord must start taking action within 24 hours of getting the notice
- For other, less urgent issues, the landlord must start taking action within 96 hours (4 days)

Important! Do not stop paying rent while you are waiting for the landlord to make repairs. If you do, your landlord can evict you.

If your landlord fails to fix the repair issues...

you have several options, including:

1. **End the lease and move out (*important to note that this can be risky*)**

To do this, send the landlord another written notice. In this one, write:

- Your name and address
- Tell the landlord again what the condition is that needs to be fixed
- State that you intend to end your lease on a specific date between ten and thirty days from the date of the notice if the repair is not made within five business days from the day the landlord got the notice.

If the landlord **does** make the repair within five business days, you cannot end your lease due to the repair issue. If they do not remedy the problem, you can move out on the date given in your notice. Once you say you are going to end your lease and move out, you are stuck with that decision unless you and your landlord agree in writing to your now staying. If you do not move out as you

said and the landlord does not agree to you continuing to stay, the landlord can evict you.

Note: This can be extremely risky. If your landlord sues you later for breaking your lease, you could be found to owe them rent if you missed a step or did this incorrectly.

- 2. Contact the Health Department and/or your local government agency that enforces building codes.** If the repair issue makes your residence dangerous to your health or the health of your family, you can call your local Health Department. If the problem involves defective heating, plumbing or electrical wiring, you may call your local government agency that enforces building codes. Tell them what your problem is and ask them to inspect the building. They will send an inspector to inspect the building. If conditions violate the health or building codes, they will notify the landlord to make the needed repairs. The landlord will have to make the repairs or pay a fine. However, if the conditions are very bad, the inspector may condemn the property. In that case, you would have to move.

- 3. Sue your landlord.**

You can file a lawsuit in County or District Court asking for damages and an order for your landlord to make repairs. This is called injunctive relief. If, on the other hand, you do not want an order for your landlord to make repairs, but only want to sue for money, you can sue the landlord in Small Claims Court for the damages he or she caused you by not making these repairs. For example, if something of yours was damaged, or you had to go to a doctor, you could sue for the bill. Likewise, if you decide to hire someone to make the repairs and you pay for that work, you can sue the landlord for what you spent to get the work done. It is very important to have evidence or proof showing you were harmed, and that it was caused by the landlord's failure to make repairs when going to court seeking money.

- 4. You can deduct rent for repairs**

There is a specific method for deducting the cost of repairs from your rent and paying to have that done by a professional. You **cannot** deduct the rent and make the repairs yourself. For important information, see the fact sheet: Tenant's Rights in Colorado: Pay and Deduct for Repairs. The process for doing this can be difficult and there are significant penalties for doing it incorrectly.

5. Use the landlord's failure to repair as a defense in an eviction case brought against you by the landlord

If a landlord tries to evict you because of the damage or lack of repair issues, or because you did not pay rent while there were habitability problems, you can defend against the eviction by raising the Warranty of Habitability issues as a defense. This normally requires the payment of rent to the court but if the court finds that you are too poor to pay (indigent) the payment can be waived by the court.

What about Retaliation?

Your landlord is not allowed to increase rent, decrease services, bring an eviction or threaten to bring an eviction against you in retaliation for making good faith complaints to them or to a government agency (like the health department) about a violation of the Warranty of Habitability.

If you withhold rent or violate your lease in some other way, your landlord is allowed to threaten eviction or bring an eviction action for these violations of the lease.

If your landlord unlawfully retaliates against you, you can terminate the rental agreement and recover damages against your landlord up to three months rent or three times your actual damages. A landlord may try to retaliate by suddenly trying to enforce a rule that they never enforced in the past. In a case like this, it would be up to a judge to decide whether this constitutes unlawful retaliation or a legitimate enforcement of a lease.

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Last updated on March 22, 2023.

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