

An aerial photograph of a suburban neighborhood. The image shows a grid of houses with brown and grey roofs, interspersed with green trees and lawns. A paved road runs through the center of the neighborhood. The top half of the image is overlaid with a semi-transparent yellow banner containing the title text.

Best Practices for Decreasing Risk in Residential Lease Management in Colorado

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BEST PRACTICES FOR DECREASING RISK IN RESIDENTIAL LEASE MANAGEMENT

A. Walk-Through at Move-in and Move-out

Prevent Disagreements about fault

Move-in / Move-out Inspection Form

Photos

Video

Lease Provisions

EXAMPLE:

Check-In Inspection, Condition of Premises and Representations: Landlord and Tenant may together conduct an inspection and inventory, of the Premises at the time of possession. A check-in inspection sheet may be completed at that time and the information contained in it will be sufficient and satisfactory proof of the condition of the Premises at the time of possession should a subsequent dispute arise. All systems and appliances on the Premises, including refrigerators, stoves, microwaves, dishwashers, washers, dryers, etc., will be in working condition at the commencement of the Term, unless specifically noted to the contrary on the check-in inspection sheet. As of the commencement of the Lease, Tenant acknowledges that Tenant has examined the Premises and is satisfied with the condition of the Premises, including all systems and appliances on the Premises. Taking possession of the Premises is conclusive evidence to the fact that the Premises are in good order and satisfactory condition.

EXAMPLE:

Check-Out Procedure: The parties may, at their discretion, conduct a check-out/walk-through of the Premises when, or immediately before, Tenant re-delivers the Premises at the end of the Lease Term. If time permits, Landlord may give Tenant a brief opportunity to repair any minor damages or to conduct additional cleaning. A check-out/walk-through, finding no damage or cleaning issues, does not guarantee return of any Security Deposit, as damages/unpaid amounts may be later found.

B. Inspections, Maintenance and Repairs

Should Landlord or Tenant be responsible for maintenance and repairs?

Reasons for Landlord to do maintenance and repairs:

Repairs and most maintenance are best done by the Landlord or vendor of Property Manager. Tenant's will either not do the work, do inferior work, or may fail to obtain proper permits. Further, the vendor's warranties and guarantees may not carry over to landlord and landlord is unlikely to be able to bring a breach of contract claim against the vendor to correct shoddy work. Lease should require that Tenant give Landlord timely notice of need for repairs and maintenance.

If Property Manager does the maintenance and repairs then Property Manager could create conflict of interest with property Owner if repairs/maintenance are done

incorrectly. Also, Property Manager's insurance should be checked to determine if Property Manager's insurance covers such liability.

Reasons for Tenant to do maintenance and repairs:

Cheaper for Landlord if Tenant makes repairs. Liability for conditions on the premises fall on the Tenant if Tenant has all responsibility for repairs.

Application of the Warranty of Habitability and local housing codes.

The Warranty of Habitability in Colorado requires landlord to be responsible for major systems of a residence. E.g., roof, windows, doors, electrical, plumbing, etc., but tenant must give notice for a breach to occur. Local housing codes generally hold the property owner ultimately responsible for compliance issues.

Inspections

Good idea to provide sufficient notice in writing of intent to inspect. Lease can provide for the right to inspect periodically at reasonable times, but if so then inspections should occur. Without periodic inspections, the extent of damage will not be known until the end of the lease. Inspections every 3-6 months is advisable. Such right to inspect may carry with it landowner liability for failing to inspect, as landlord liability depends in part on whether the landlord has the authority to manage, superintend, direct or oversee repairs on the premises – whether in the lease, or potentially by the course and conduct of the parties. Nordin v. Madden, 148 P.3d 218, 221 (Colo.App. 2006).

EXAMPLE:

Entry by Landlord: Landlord may enter the Premises upon 24 hours' notice, at reasonable hours for reasonable purposes (such as repairs, additions, inspections or re-letting to prospective new tenants or purchasers). Landlord may also enter the Premises in the event Landlord reasonably or justifiably believes an emergency exists, without notice, or in the event of apparent vacancy of the Premises. Landlord may list and exhibit the Premises for sale or rent and may place "for sale" or "for rent" signage in the yard. Landlord's realtor may enter with or without landlord and Tenant shall cooperate with showings and keep the property clean and presentable.

EXAMPLE:

Tenant's Notification, Restrictions, and Additional Responsibilities: Except as may otherwise be permitted by applicable law, Tenant shall not perform or contract with third parties to perform any repairs of any kind on the Premises or structure on which the Premises are located without the written consent of Landlord. If any repair which is the responsibility of either Tenant or Landlord becomes necessary, Tenant must notify Landlord, in writing, as soon as possible and allow reasonable time for the work to be completed. Any unauthorized work performed or contracted for by Tenant will be at Tenant's sole expense and no deductions or offsets in Rent or Additional Rent shall be permitted except to the extent prohibited by the Colorado Warranty of Habitability Law, codified at § 38-12-501 *et seq.*, C.R.S.

EXAMPLE:

Landlord's Maintenance and Repair of the Premises: Landlord shall be responsible for the maintenance and repair of all structural components, interior and exterior walls, floors, ceiling, roofs, sewer connections, plumbing, wiring, appliances and glass used in connection with the Premises, upon prompt notice by Tenant to Landlord in writing. More specifically, (i) any repairs, replacements, restorations, or maintenance that have been necessitated by reason of ordinary wear and tear; (ii) any repairs, replacements, restorations, or maintenance that have been necessitated by sudden natural forces or acts of God, or by fire not caused by Tenant; and (iii) any repairs, improvements or maintenance that are required by applicable state and municipal rental housing codes that govern the area in which the Premises are located, including, *inter alia*, the Colorado Warranty of Habitability as set forth in C.R.S. § 38-12-501 *et seq.* Notwithstanding the foregoing provisions of the Lease, if repairs, replacements, restorations, or maintenance have been necessitated by any other reason including, without limitation, Tenant's intentional, reckless or negligent use, misconduct or abuse of the Premises, improvements or systems then Tenant shall be responsible for the cost and expense for repairs, improvements or maintenance occasioned by such acts or omissions. In the event the parties agree in a separate writing to the contrary as specified herein for the Tenant to be responsible for certain repairs and maintenance beyond those articulated to be the Tenant's responsibility in the paragraph above, then the responsibilities of the Landlord, as set forth in this paragraph, shall be modified accordingly.

C. Returning the Security Deposit and Statutory Accounting of Withholding

i. Security Deposit Covers What?

Be careful not to limit security deposit to “damages to the property.” Instead, state that the security deposit is to “secure tenant’s faithful performance of the lease.” Be careful not to say that the security deposit cannot be used to cover the last month’s rent. Instead, it should state that *tenant* cannot apply the security deposit to the last month’s rent, but landlord may do so at landlord’s sole discretion.

ii. Deadline to Return or Account (C.R.S. § 38-12-103)

Must return deposit or account for any or all withholding within 30 days “after the termination of a lease or surrender and acceptance of the premises, whichever occurs last” to tenant’s last known address. C.R.S. § 38-12-103(1). Default is 30 days “after”, but the lease can specify up to 60 days after. **Landlord is responsible for triple the amount wrongfully withheld, together with tenant’s attorney’s fees and costs. A failure to timely account or timely return a security deposit is per se “wrongful”**

EXAMPLE:

Retention or Return of Security Deposit: Landlord may retain the Security Deposit for any reason related to Tenant’s faithful performance of this Lease, including but not limited to nonpayment of Rent or Additional Rent, repair of the Premises or Common Areas, replacement of damaged or missing items on the Premises or Common Areas, attorney’s fees and court costs, and/or cleaning of the Premises or Common Areas

beyond normal wear and tear incurred during the Lease Term. Among other things, the Security Deposit may be used to professionally clean carpets, deodorize the property, clean oil on concrete, replace unreturned keys, garage door openers or other security devices, removal of unauthorized locks, replacing burned out or broken light bulbs, or to get landscaping back to move-in condition (if Tenant's obligation), which Tenant agrees are not considered "normal wear and tear." Tenant may not elect to apply the Security Deposit as last month's rent. Any amount remaining from the Security Deposit, together with a written accounting for any portion retained, will be returned by mail to Tenant not more than Sixty (60) days after expiration of the Lease Term. Landlord shall mail the return or accounting to Tenant's last known address. If Tenant fails to provide Landlord a forwarding address, the Premises will be the last known address. Unless directed by all Tenants in writing, if Tenant consists of more than one person, Tenant agrees that Landlord may provide, at Landlord's discretion, the return or accounting to any one Tenant or pro-rata refunds to each person.

iii. Avoid the non-refundable "pet deposit" or "pet fee."

Issues:

- Does a non-refundable pet deposit/pet fee violate Colorado's Security Deposit Act?
- Can a landlord use the refundable security deposit for pet damages that exceed the pet fee/pet deposit? Pet damages invariably far exceed they typical small fee charged.

Tenants have challenged the pet deposit and pet fee, claiming it is refundable under state security deposit statutes with some success, including one class action lawsuit. No case

in Colorado has been found addressing the issue. Calling it a “fee,” does not necessarily protect landlord. Safest practice is to charge additional monthly rent for pets. Landlord gets increased rent, monies more sufficient to cover damages and extra wear and tear, and Landlord has no issue using main security deposit for pet damages.

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