

**BREACH OF WARRANTY OF HABITABILITY SUMMARY**

**(Updated January 14, 2021)**

**Habitability - Defined**

A residential premises is deemed uninhabitable if:

**(a)** There is **mold** that is associated with dampness, or there is any other condition causing the residential premises to be damp, which condition, if not remedied, would materially interfere with the health or safety of the tenant, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their proper functioning and intended use; or

**(b)** It substantially lacks any of the following characteristics (through no misconduct of the tenant or guest):

**(I)** **Functioning appliances** that conformed to applicable law at the time of installation and that are maintained in good working order;[[1]](#footnote-1)

**(II)** Waterproofing and weather protection of **roof and exterior walls** maintained in good working order, including unbroken windows and doors;

**(III)** **Plumbing or gas facilities** that conformed to applicable law in effect at the time of installation and that are maintained in good working order;

**(IV)** **Running water and reasonable amounts of hot water** at all times furnished to appropriate fixtures and connected to a sewage disposal system approved under applicable law;

**(V)** Functioning **heating** facilities that conformed to applicable law at the time of installation and that are maintained in good working order;

**(VI)** **Electrical lighting**, with wiring and electrical equipment that conformed to applicable law at the time of installation, maintained in good working order;

**(VII)** **Common areas** and areas under the control of the landlord that are kept reasonably clean, sanitary, and free from all accumulations of debris, filth, rubbish, and garbage and that have appropriate extermination in response to the infestation of rodents or vermin;[[2]](#footnote-2)

**(VIII)** **Appropriate extermination** in response to the infestation of rodents or vermin throughout a residential premises;

**(IX)** An adequate number of appropriate **exterior receptacles** for garbage and rubbish, in good repair;

**(X)** **Floors, stairways, and railings** maintained in good repair;

**(XI)** **Locks on all exterior doors** and locks or security devices on windows designed to be opened that are maintained in good working order; or

**(XII)** Compliance with **all applicable building, housing, and health codes**, the violation of which would constitute a condition that materially interferes with the life, health, or safety of the tenant. or

**(c)** is in a condition that materially interferes with the tenant's life, health, or safety. C.R.S. 38-12-505(a)-(c).

**Method of Notice to Landlord**

A tenant who gives a landlord electronic notice of a condition shall send such notice only to the e-mail address, phone number, or electronic portal specified by the landlord in the rental agreement for communications.

In the absence of such a provision in the rental agreement, the tenant shall communicate with the landlord in a manner that the landlord has previously used to communicate with the tenant. The tenant shall retain sufficient proof of delivery of the electronic notice. C.R.S. 38-12-503(2.3).

**Time for Remediation following Notice**

Landlord must commence remedial action by employing reasonable efforts within the following period after receiving the notice:

**(I)** **24 hours (1 day)**, where the condition materially interferes with the tenant's life, health, or safety; or

**(II)** **96 hours (4 days)** for all others, and the tenant has included with the notice permission to the landlord or to the landlord's authorized agent to enter the residential premises.[[3]](#footnote-3) C.R.S. 38-12-503(2)(b)(I)-(II).

A landlord in all events must within 24 hours (1 day) indicate the landlord's intentions for remedying the condition, including an estimate of when the remediation will commence and when it will be completed. C.R.S. 38-12-503(2.5).

**TENANT REMEDIES FOR BREACH**

**Relocation**:

If the condition concerns a condition that materially interferes with the tenant's life, health, or safety, the landlord, at the request of the tenant, shall provide the tenant:

**(I)** A comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant; or

**(II)** A hotel room, as selected by the landlord, at no expense or cost to the tenant.

A landlord is not required to pay for any other expenses of a tenant that arise after the relocation period. A tenant continues to be responsible for payment of rent under the rental agreement during the period of any temporary relocation and for the remainder of the term of the rental agreement following the remediation. C.R.S. 38-12-503(4)(a)-(b).

**Lease termination**:
If the landlord does not remediate in the required timeframe, the tenant must send a separate notice stating that s/he plans to terminate and vacate in a period between 10-30 days from giving such notice. If the landlord remediates within **5 business days** of receiving this additional notice, the tenant cannot terminate. C.R.S. 38-12-507(a).

If the same condition that substantially caused a breach of the warranty of habitability recurs within six months after the condition is repaired or remedied, other than an appliance malfunction, the tenant may terminate the rental agreement **14 days** after providing the landlord written or electronic notice of the tenant's intent to do so. The notice must include a description of the condition and the date of the termination of the rental agreement. C.R.S. 38-12-507(3)(a).

If the same appliance malfunction recurs within six months, the tenant may terminate the rental agreement **14 days** after providing the landlord written or electronic notice of the tenant's intent to do so. The notice must include a description of the condition and the date of the termination of the rental agreement. However, if the landlord remedies the condition within 14 days after receiving the notice, the tenant may not terminate the rental agreement. C.R.S. 38-12-507(3)(b).

**Injunctive relief**:

A tenant may obtain injunctive relief and money damages for breach of the warranty of habitability. C.R.S. 38-12-507(1)(b)(I).

If the condition alleged to breach the warranty of habitability is the result of the action or inaction of a tenant in another dwelling unit or another third party not under the direction and control of the landlord and the landlord has taken reasonable, necessary, and timely steps to abate the condition, but is unable to abate the condition due to circumstances beyond the landlord's reasonable control, the tenant's only remedy shall be termination of the rental agreement consistent with section 38-12-507(1)(a). C.R.S. 38-12-508(5).

Money damages are recoverable whether or not the tenant requests injunctive relief. Thus, a tenant could file a complaint for just money damages, or injunctive relief, or money *and*injunctive relief.

1. Injunctive Relief

Injunctive relief is simply a court order requiring the landlord to make the fix within a certain amount of time. The value of the court order is that failure to comply is punishable by contempt of court, which can be a criminal penalty.

1. Damages

The court shall determine the actual damages. C.R.S. 38-12-507(1)(b)(I). Damages may include but are not limited to a reduction in fair market rental value of the premises. C.R.S. 38-12-507(1(d). One may argue that there is no market for an apartment with the habitability issue (no heat, rats, etc.), therefore, full rent should be returned.

A landlord is not subject to any court order for injunctive relief if:

1. The landlord tenders the actual damages to the court within two business days after the order (which the tenant can then request); **and**
2. The proceeding for injunctive relief is about anything other than a condition that materially interferes with the tenant's life, health, or safety that has not been repaired or remedied. C.R.S. 38-12-507(1)(b)(I).

For instructions on how to file for injunctive relief and/or money damages, see the court’s website at <https://www.courts.state.co.us/Forms/SubCategory.cfm?Category=Money>

**Defense to eviction**

In an action for eviction based upon nonpayment of rent in which the tenant asserts a defense based upon the landlord's alleged breach of the warranty of habitability, upon the filing of the tenant's answer the court shall order the tenant to pay into the registry of the court all or part of the rent accrued after due consideration of expenses already incurred by the tenant based upon the landlord's breach of the warranty of habitability. C.R.S. 38-12-507(1)(c).

Whether asserted as a claim or counterclaim, a tenant may recover damages directly arising from a breach of the warranty of habitability, which may include, but are not limited to, any reduction in the fair rental value of the dwelling unit. C.R.S. 38-12-507(1)(d).

Note: the withholding of rent for a breach is likely is not going to be a valid defense to an eviction action unless the tenant has followed the steps below.

**Rent reduction**

The tenant may deduct from one or more rent payments the cost of repairing or remedying a condition that is the basis of a breach of the warranty of habitability if the tenant provides notice of the condition to the landlord and the landlord fails to commence remedial action by employing reasonable efforts within the applicable period.[[4]](#footnote-4) C.R.S. 38-12-507(1)(e)(I).

At least **10 days** before deducting costs from a rent payment, a tenant shall provide the landlord with written or electronic notice of the tenant's intent to do so. The notice must specify:

1) the date of notification,

2) the name of the landlord or property manager,

3) the address of the rental property,

4) the condition that requires a repair or remedy,

5) the date upon which the tenant provided notice to the landlord of the condition that requires a repair or remedy, and

6) a copy of at least one good-faith estimate of costs to repair or remedy the condition, which estimate has been prepared by a professional who is unrelated to the tenant, is trained to perform the work for which the estimate is being prepared, and complies with all licensing, certification, or registration requirements of this state that apply to the performance of the work.

A tenant withholding rent over multiple payment periods is required to provide notice only once. The tenant shall retain a copy of the notice. C.R.S. 38-12-507(1)(e)(I)(B)(II).

After a tenant provides a landlord notice of the tenant's intent to deduct costs, the landlord has **4 business days** to obtain one or more good-faith estimates of such costs in addition to any estimate that the tenant included in the notice. The landlord thereafter shall commence work to repair or remedy the condition **as soon as reasonably possible**. C.R.S. 38-12-507(1)(e)(I)(B) (III).

If the landlord does not obtain any additional estimates within the 4 days, the tenant may proceed to deduct costs from one or more rent payments, based on the estimate acquired by the tenant, until the entire amount of the estimate is deducted. C.R.S. 38-12-507(1)(e)(I)(B)(IV).

A tenant who deducts costs shall not repair or remedy the condition but shall hire a professional who is unrelated to the tenant, is trained to perform the work for which the estimate is being prepared, and complies with all licensing, certification, or registration requirements of this state that apply to the performance of the work. C.R.S. 38-12-507(1)(e)(I)(B)(V). In lieu of repairing a malfunctioning appliance, a tenant may replace the malfunctioning appliance so long as the replacement appliance is at least of substantially comparable quality and has substantially the same features as the original appliance. C.R.S. 38-12-507(1)(e)(I)(B)(XI).

**Prohibition on retaliation**

A landlord cannot retaliate against a tenant by increasing rent or decreasing services or by bringing or threatening to bring an action for possession in response to the tenant:

1. Having made a good faith complaint to the landlord or to a governmental agency alleging an uninhabitable condition as described above; or
2. Organizing or becoming a member of a tenants’ association or similar organization. C.R.S. 38-12-509(1)(a)-(b).

If a landlord retaliates against a tenant in violation of this section, the tenant may terminate the rental agreement and recover an amount not more than three months’ periodic rent or three times the tenant’s actual damages, whichever is greater, plus attorney fees and costs. C.R.S. 38-12-509(2).

1. "Appliance" means a **refrigerator, range stove, or oven** that is included within a residential premises by a landlord for the use of the tenant pursuant to the rental agreement. Nothing requires a landlord to provide any appliance, and section 38-12-505 applies to appliances solely to the extent that appliances are part of a written agreement or are otherwise actually provided to a tenant by the landlord at the inception of the tenant's occupancy of the residential premises. C.R.S. 13-12-502(1). [↑](#footnote-ref-1)
2. No deficiency in the common area shall render a residential premises uninhabitable, unless it materially and substantially limits the tenant's use of his or her dwelling unit. [↑](#footnote-ref-2)
3. Mold has special notice procedures. *See* C.R.S. 38-12-503(2.2)(a)-(c). [↑](#footnote-ref-3)
4. A tenant cannot deduct rent if the residential premises was constructed, acquired, developed, rehabilitated, or maintained with: **(A)** Funding provided pursuant to section 8 or 9 of the federal "United States Housing Act of 1937", as amended, 42 U.S.C. secs. 1437f and 1437g; **(B)** Funding from the home investment partnerships program of the federal department of housing and urban development; or **(C)** Federal low-income housing tax credits, Colorado affordable housing tax credits, or funding provided under any federal, state, or local program that restricts maximum rents for persons of low or moderate income and that is currently subject to a use restriction that is monitored to ensure compliance by the federal government, the state government, a county government, or a municipal government, or by any political subdivision or designated agency thereof. C.R.S. 38-12-507(1)(e)(I)(B)(VIII)(A)-(C). [↑](#footnote-ref-4)