



2021 Changes to Colorado Landlord-Tenant Law

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This article highlights changes to Colorado landlord-tenant law that became effective on October 1, 2021.

The 2021 Colorado Legislature substantially reformed residential landlord-tenant law in Colorado. The rights, responsibilities, and activities of residential landlords, their tenants, and even the courts and county sheriffs are affected by the passage of HB 21-1121¹ and SB 21-173,² which became effective on October 1, 2021. This article summarizes these bills and explains their impact.

New Landlord and Tenant Rights and Responsibilities

Landlords have increased responsibilities and tenants have corresponding rights under HB 21-1121 and SB 21-173 as to pre-court proceedings, the court process itself, and post-court proceedings.

HB 21-1121

HB 21-1121 amended CRS § 38-12-204 to add subsection (3) and created CRS § 38-12-702 to prohibit a landlord from increasing a tenant's rent more than one time in a 12-month period, regardless of whether the tenancy is a written lease with a set term, month-to-month, or an indefinite arrangement with no written documentation.

HB 21-1121 also amended CRS § 38-12-701 to state that landlords must give residential tenants who do not have a written rental agreement a 60-day written notice before any rent increase and may not terminate a tenancy to get around this provision.

SB 21-173

SB 21-173 amended CRS § 38-12-102 to make minor changes to the statutory definitions of "landlord," "tenant," "late fees," "normal wear and tear," "security deposits," and other terms. Notably, the statute now explicitly defines a landlord as the management or landlord

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of a mobile home park as defined under the Mobile Home Park Act. The bill also created CRS § 38-12-105, which substantially impacts a landlord's ability to charge late fees and caps the amount a landlord can charge for a late fee. CRS § 38-12-105(1) governs late fees charged to tenants and mobile homeowners and prohibits landlords and their agents from

- charging any late fee until the rent is seven days late;

- charging a late fee in excess of \$50 or 5% of the amount of past due rent, whichever is greater;
- charging any late fee at all, unless it is disclosed in a rental agreement;
- removing a tenant or initiating a forcible entry and detainer (FED) proceeding because a tenant fails to pay one or more late fees;
- terminating a tenancy or lease in a mobile home park because of failure to pay one or more late fees;
- imposing any late fees where the rent is paid by a rent subsidy provider that is responsible for the rent payment;
- charging late fees that cumulatively exceed \$50 or 5% of the monthly rent, whichever is greater;
- requiring interest on a late fee;
- recouping any late fee from rent paid; and
- charging any late fee, unless the landlord has provided written notice of the late fee within 180 days after the date that the rent payment was due.

Any action contrary to the above requirements is void and unenforceable and is subject to an automatic \$50 penalty under CRS § 38-12-105(2) and (3).

CRS § 38-12-105(4) provides a seven-day cure period for CRS § 38-12-105(1) violations. A landlord's failure to cure gives the tenant or mobile homeowner the right to initiate a civil action for injunctive relief. Such plaintiffs may also obtain compensatory damages, a statutory penalty of no less than \$150 and no more than \$1,000 for each violation, and costs and reasonable attorney fees under CRS § 38-12-105(2) and (5). The cure period rights may not be waived by a written agreement.

Finally, a tenant or mobile homeowner may raise a CRS § 38-12-105 violation as an

affirmative defense in an FED action between the offending landlord and the tenant.

SB 21-173 also amended CRS § 38-12-201.5(2.5) of the Mobile Home Park Act to provide that the definition of “late fee” as to mobile homeowners is that set forth in CRS § 38-12-102(3). The bill further amended CRS § 38-12-213 to provide mobile homeowners adequate notice of late fees and further that no late fees can be imposed on mobile homeowners unless rent is late by 10 days. And, under amendments to CRS § 38-12-220, if a landlord violates the late fee provisions, the mobile homeowner tenant has a private right of civil action that includes actual economic damages and attorney fees and costs.

Further, SB 21-173 amended the CRS § 38-12-101 legislative declaration by stating that the late fee amendments are to be “liberally construed” to “protect the interests of tenants, mobile home owners, and landlords.”

Under SB 21-173’s amendments to CRS § 38-12-510, if a landlord willfully and unlawfully terminates a tenancy via lockout, termination of utilities, or removal of doors or windows, the tenant may bring a civil action against the landlord to restrain any further unlawful action by the landlord and to recover statutory damages equal to the tenant’s actual damages and the higher amount of either three times the monthly rent or \$5,000, plus costs and attorney fees. Courts are also authorized under this statute to restore the tenancy to a tenant affected by a violation of this section.

SB 21-173 additionally amended CRS § 38-12-801 by adding a requirement that rental agreements may not include unreasonable liquidated damages clauses that assign costs stemming from an eviction to a party and prohibiting one-way fee shifting clauses concerning any dispute related to the property, including eviction. All fee clauses must award attorney fees to the prevailing party. Any clause that violates this provision is null and void.

Changes in Pleadings and Court Proceedings

HB 21-1121 and SB 21-173 made significant changes to the eviction process affecting both pleadings and court proceedings.

Pleadings

Both HB 21-1121 and SB 21-173 amended CRS § 13-40-111, which governs issuance and return of the summons. Under CRS § 13-40-111(1), the summons must now describe the necessity of filing an answer, and subsection (5) requires inclusion of a website link and phone numbers of available tenant resources. The Colorado Department of Local Affairs (DOLA) must provide this information on its website. Further, under subsection (6), a blank answer form must be attached to the summons along with a new form that allows either party to request all documents in the landlord’s and tenant’s possession that are relevant to the proceeding. On October 13, 2021, the Supreme Court issued Rule Change 2021(21) to conform the Colorado Rules of County Court Civil Procedure to these statutory amendments.³

SB 21-173 also amended CRS § 13-40-113(1) to state that the answer in an FED case must be filed at or before the appearance date. This means renters will be able to file their answers at any time on the day the answer is due. The answer must contain all defenses. Subsection (2) allows additional pleadings so long as they do not delay the proceedings. Under subsection (3), a defendant does not waive defenses related to notice by filing an answer in accordance with the statute, and such defense may be raised in the answer or in a prehearing motion but may not be raised for the first time at the hearing.

Court Proceedings

CRS § 13-40-113(4) provides that after the answer is filed, the court must set a trial date no sooner than seven days and not more than 10 days after the answer is filed. The 10 days

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may be extended for good cause but not if the FED action is based on a substantial violation as defined in CRS § 13-40-107.5 or for termination of a tenancy under CRS § 38-12-203. In addition, CRS § 13-40-113(4)(b) provides that after an answer is filed but before trial, the court must order the landlord or tenant to provide documentation relevant to the action pursuant to a party's request.

As relevant to FED proceedings, SB 21-173 amended CRS § 38-12-507 concerning tenant remedies for a breach of the warranty of habitability. Indigent tenants may now avoid the rent deposit requirement when they assert violations of the warranty of habitability as an affirmative defense in nonpayment eviction cases if they previously served notice of the alleged breach on the landlord and they qualify for a waiver of the bond requirement. Waiver of the bond requires a court finding that the tenant is indigent as now defined in CRS § 38-12-507(1)(c)(II). Under CRS § 38-12-507(1)(c)(II)(B), tenants are deemed indigent if their income is less than 250% of the federal poverty level, without consideration of their assets. Tenants in low-rent housing must meet the formula for indigency in CRS § 38-12-507(1)(c)(II)(A).

If the tenant successfully presents a breach of the warranty of habitability defense, under CRS § 38-12-507(1)(d.5) the court may order the tenant damages, including but not limited to a reduction in the fair rental value of the premises. In addition, the court must deny possession to the landlord and deem the tenant the prevailing party if the tenant pays the court-determined reduced value of the premises within 14 days of judgment.

The court may also order the landlord to make repairs and reduce rent until such repairs are completed. If the tenant does not make the ordered rent payments, the court may award possession to the landlord. The court retains jurisdiction until the repairs are completed. Finally, a prevailing tenant may also be awarded costs and attorney fees.

HB 21-1121 further changed post-judgment court proceedings by amending CRS § 13-40-122, governing writs of restitution. While the requirement that a writ of restitution may not issue until 48 hours after entry of judgment has

not changed, the amendment provides that a sheriff may not execute a writ of restitution until at least 10 days after the entry of judgment.

SB 21-173 also amended CRS § 13-40-115 by adding subsection (4), which states that a landlord who has filed an FED matter alleging nonpayment of rent must accept payment of all amounts due under the nonpayment notice or demand, and any rent that has accrued while the case was pending, at any time until a judge enters a judgment for possession. The tenant may pay the landlord or the court. Once the court confirms payment, it must vacate any judgments that have been issued with prejudice.

Conclusion

HB 21-1121 and SB 21-173 have changed the landlord-tenant landscape in Colorado. Practitioners should familiarize themselves with these changes and educate their clients about their new rights and responsibilities to ensure a smooth transition for all parties. ^{CL}



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NOTES

1. HB 21-1171, Concerning Protections for Residential Tenants Related to Actions by Landlords.
2. SB 21-173, Concerning Rights Related to Residential Rental Agreements, and, in Connection Therewith, Making an Appropriation.
3. [https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2021/Rule%20Change%202021\(21\).pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2021/Rule%20Change%202021(21).pdf).