

LAW SUMMARY

Office of Legislative Legal Services



SECURITY DEPOSIT RETURNS TO RENTERS¹

In 1971, the Colorado General Assembly passed a law giving renters a court remedy against landlords who withhold security deposits willfully and wrongfully.²

Length of time for security deposit returns

According to section 38-12-103 (1), C.R.S., a landlord must return to the tenant the full security deposit within one month after the termination of the lease or the surrender of the key to the leased property, whichever date is later, unless the lease agreement specifies a longer period. However, that longer period cannot be more than 60 days.³

Reasons for withholding security deposits

A landlord cannot withhold a tenant's security deposit for "normal wear and tear." A security deposit or a portion of a security deposit can be retained for the following reasons:

- Nonpayment of rent;
- Abandonment of premises;
- Nonpayment of utility charges;
- Nonpayment of repair work or cleaning contracted for by the tenant.⁴

If the landlord does not refund the entire deposit, the landlord must provide the tenant with "a written statement listing the exact reasons for the retention of any portion of the security deposit,"⁵ together with a payment equal to the amount of the security deposit

¹ This summary contains information commonly requested from the Office of Legislative Legal Services. It does not represent an official legal opinion of the General Assembly or the state of Colorado and does not bind the members of the General Assembly. It is intended to provide a general overview of Colorado law as of the date of its preparation. Any person needing legal advice should consult his or her own lawyer and should not rely on the information in this memorandum.

The primary legal and factual source for the information contained in this memorandum is: Section 38-12-103, Colorado Revised Statutes.

² L. 71: p.592, § 1; C.R.S. 1963: § 58-1-28.

³ § 38-12-103 (1), C.R.S.

⁴ *Id.*

⁵ *Id.*

minus any amount retained. If the landlord fails to include the written statement, the landlord forfeits all rights to withhold any portion of the security deposit.⁶

The tenant's legal recourse

If a landlord intentionally retains a security deposit without a valid reason under the statute, he or she is obligated to pay three times the amount that was wrongfully withheld, plus court costs and reasonable attorney fees.⁷ The tenant must notify the landlord of his or her intention to file legal proceedings at least seven days before taking action.⁸ This gives the landlord one last week to return the security deposit.⁹ However, the landlord may only avoid paying damages of three times the amount wrongfully withheld by returning the entire security deposit during this last week; if the landlord did not provide an accounting and a partial refund on time, the landlord forfeits the right to withhold any portion of the security deposit.¹⁰ In any court action, the landlord has the burden of proving that he or she did not wrongfully withhold all or part of the security deposit.¹¹

What happens to the security deposit if there is a new landlord?

If the landlord sells the property or otherwise loses his or her legal title or interest in the property that the tenant is renting, the tenant's security deposit must be transferred to the new landlord or transferee or returned to the tenant after any legal deductions.¹²

Tenant cannot waive rights

A tenant cannot, either orally or in writing, waive his or her rights under section 38-12-103, C.R.S. A lease provision or other agreement that purports to waive those rights is not enforceable by the landlord.¹³

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⁶ § 38-12-103 (2), C.R.S.

⁷ § 38-12-103 (3)(a), C.R.S.

⁸ *Id.*

⁹ *Turner v. Lyon*, 189 Colo. 234, 539 P.2d 1241 (1975); *Mishkin v. Young*, 107 P.3d 393 (Colo. 2005).

¹⁰ *Mishkin v. Young*, 107 P.3d 393 (Colo. 2005).

¹¹ § 38-12-103 (3)(b), C.R.S.

¹² § 38-12-103 (4), C.R.S. The requirement applies to any change in ownership, "whether by sale, assignment, death, appointment of a receiver, or otherwise".

¹³ § 38-12-103 (7), C.R.S.