

**Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 08-0071.01 Ed DeCecco

HOUSE BILL 08-1356

HOUSE SPONSORSHIP

Merrifield, Kefalas, Soper, and Weissmann

SENATE SPONSORSHIP

Tupa and Boyd,

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING LANDLORD AND TENANT RELATIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Prohibits a residential landlord or tenant who prevails in a forcible entry and detainer action from recovering attorney fees, unless the residential rental agreement contains a provision for either party to obtain attorney fees.

Creates a warranty of habitability in every rental agreement for a residential premises. Establishes that the warranty is breached if:

- ! A residential premises is uninhabitable or unfit for the uses reasonably intended by the parties;
- ! The residential premises is in a condition that is materially

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 23, 2008

dangerous or hazardous to the tenant's life, health, or safety; and

- ! The landlord has received notice of such condition described and failed to cure the problem within a reasonable time.

Establishes the notice a landlord must receive. Prohibits misconduct by a tenant or a person under the tenant's control from constituting a breach of the warranty. Establishes that a residential premises is considered uninhabitable when it substantially lacks specified characteristics. Prohibits a deficiency in a common area from rendering a residential premises uninhabitable, unless it materially and substantially limits the tenant's use of his or her dwelling unit. Permits a tenant in certain circumstances to assume responsibility for one or more of these characteristics.

Imposes upon every tenant of a residential premises a duty to use that portion of the premises within the tenant's control in a reasonably clean and safe manner. Establishes what constitutes a failure to keep a premises in a reasonably clean and safe manner. Prohibits a tenant from knowingly, intentionally, deliberately, or negligently destroying, defacing, damaging, impairing, or removing any part of a dwelling unit or knowingly permitting any person within their control to do so.

Establishes a tenant's remedies for a breach of the warranty of habitability, which remedies include self-help, termination of the rental agreement, injunctive relief, and damages. Establishes who may allege the breach, when the breach may be used as a defense, requirements for using the breach as a defense to a claim for possession, and defenses to the allegation of a breach. Requires certain information related to the use of a breach of warranty of habitability as a defense to a claim for possession to be included in the summons for a forcible entry and detainer action.

Prohibits a landlord from retaliating against a tenant who proves a breach of the warranty of habitability.

Prohibits a landlord from removing or excluding a tenant from a residential premises without resorting to court process, with specified exceptions. Establishes that, if a landlord willfully and unlawfully removes the tenant from the premises or willfully and unlawfully causes the termination of heat, running water, hot water, electric, gas, or other essential services, the tenant may seek any remedy available under the act or any other law.

Makes legislative findings and declarations that the provisions of the act are a matter of statewide concern. Establishes the underlying purposes and policies of the act.

Defines terms.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 13-40-111 (1), Colorado Revised Statutes, is
3 amended to read:

4 **13-40-111. Issuance and return of summons.** (1) Upon filing
5 the complaint as provided in section 13-40-110, the clerk of the court or
6 the attorney for the plaintiff shall issue a summons. The summons shall
7 command the defendant to appear before the court at a place named in
8 such summons and at a time and on a day which shall be not less than five
9 business days nor more than ten calendar days from the day of issuing the
10 same to answer the complaint of plaintiff. The summons shall also
11 contain a statement addressed to the defendant stating: "If you fail to file
12 with the court, at or before the time for appearance specified in the
13 summons, an answer to the complaint setting forth the grounds upon
14 which you base your claim for possession and denying or admitting all of
15 the material allegations of the complaint, judgment by default may be
16 taken against you for the possession of the property described in the
17 complaint, for the rent, if any, due or to become due, for present and
18 future damages and costs, and for any other relief to which the plaintiff
19 is entitled. IF YOU ARE CLAIMING THAT THE LANDLORD'S FAILURE TO
20 REPAIR THE RESIDENTIAL PREMISES IS A DEFENSE TO THE LANDLORD'S
21 ALLEGATION OF NONPAYMENT OF RENT, THE COURT WILL REQUIRE YOU TO
22 PAY INTO THE REGISTRY OF THE COURT, AT THE TIME OF FILING YOUR
23 ANSWER, THE RENT DUE LESS ANY EXPENSES YOU HAVE INCURRED BASED
24 UPON THE LANDLORD'S FAILURE TO REPAIR THE RESIDENTIAL PREMISES."

25 **SECTION 2.** 13-40-123, Colorado Revised Statutes, is amended
26 to read:

27 **13-40-123. Damages.** The prevailing party in any action brought

1 under the provisions of this article is entitled to recover damages,
2 reasonable attorney fees, and costs of suit; EXCEPT THAT A RESIDENTIAL
3 LANDLORD OR TENANT WHO IS A PREVAILING PARTY SHALL NOT BE
4 ENTITLED TO RECOVER REASONABLE ATTORNEY FEES UNLESS THE
5 RESIDENTIAL RENTAL AGREEMENT BETWEEN THE PARTIES CONTAINS A
6 PROVISION FOR EITHER PARTY TO OBTAIN ATTORNEY FEES. Nothing in this
7 section shall be construed to permit the entry of judgments in any single
8 proceeding in excess of the jurisdictional limit of said court.

9 **SECTION 3.** Article 12 of title 38, Colorado Revised Statutes, is
10 amended BY THE ADDITION OF A NEW PART to read:

11 **PART 5**

12 **OBLIGATION TO MAINTAIN RESIDENTIAL PREMISES -**
13 **UNLAWFUL REMOVAL**

14 **38-12-501. Legislative declaration - matter of statewide**
15 **concern - purposes and policies.** (1) THE GENERAL ASSEMBLY HEREBY
16 FINDS AND DECLARES THAT THE PROVISIONS OF THIS PART 5 ARE A MATTER
17 OF STATEWIDE CONCERN. ANY LOCAL GOVERNMENT ORDINANCE,
18 RESOLUTION, OR OTHER REGULATION THAT IS IN CONFLICT WITH THIS PART
19 5 SHALL BE UNENFORCEABLE.

20 (2) THE UNDERLYING PURPOSES AND POLICIES OF THIS PART 5 ARE
21 TO:

22 (a) SIMPLIFY, CLARIFY, MODERNIZE, AND REVISE THE LAW
23 GOVERNING THE RENTAL OF DWELLING UNITS AND THE RIGHTS AND
24 OBLIGATIONS OF LANDLORDS AND TENANTS;

25 (b) ENCOURAGE LANDLORDS AND TENANTS TO MAINTAIN AND
26 IMPROVE THE QUALITY OF HOUSING; AND

27 (c) MAKE UNIFORM THE LAW WITH RESPECT TO THE SUBJECT OF

1 THIS PART 5 THROUGHOUT COLORADO.

2 **38-12-502. Definitions.** AS USED IN THIS PART 5, UNLESS THE
3 CONTEXT OTHERWISE REQUIRES:

4 (1) "COMMON AREAS" MEANS THE FACILITIES AND
5 APPURTENANCES TO A RESIDENTIAL PREMISES, INCLUDING THE GROUNDS,
6 AREAS, AND FACILITIES HELD OUT FOR THE USE OF TENANTS GENERALLY
7 OR WHOSE USE IS PROMISED TO A TENANT.

8 (2) "DWELLING UNIT" MEANS A STRUCTURE OR THE PART OF A
9 STRUCTURE THAT IS USED AS A HOME, RESIDENCE, OR SLEEPING PLACE BY
10 A TENANT.

11 (3) "LANDLORD" MEANS THE OWNER, MANAGER, LESSOR, OR
12 SUBLESSOR OF A RESIDENTIAL PREMISES.

13 (4) "RENTAL AGREEMENT" MEANS THE AGREEMENT, WRITTEN OR
14 ORAL, EMBODYING THE TERMS AND CONDITIONS CONCERNING THE USE
15 AND OCCUPANCY OF A RESIDENTIAL PREMISES.

16 (5) "RESIDENTIAL PREMISES" MEANS A DWELLING UNIT, THE
17 STRUCTURE OF WHICH THE UNIT IS A PART, AND THE COMMON AREAS.

18 (6) "TENANT" MEANS A PERSON ENTITLED UNDER A RENTAL
19 AGREEMENT TO OCCUPY A DWELLING UNIT TO THE EXCLUSION OF OTHERS.

20 **38-12-503. Warranty of habitability.** (1) IN EVERY RENTAL
21 AGREEMENT, THE LANDLORD IS DEEMED TO WARRANT THAT THE
22 RESIDENTIAL PREMISES IS FIT FOR HUMAN HABITATION.

23 (2) A LANDLORD BREACHES THE WARRANTY OF HABITABILITY
24 SET FORTH IN SUBSECTION (1) OF THIS SECTION IF:

25 (a) A RESIDENTIAL PREMISES IS UNINHABITABLE AS DESCRIBED IN
26 SECTION 38-12-505 OR OTHERWISE UNFIT FOR HUMAN HABITATION;
27 AND

1 (b) THE RESIDENTIAL PREMISES IS IN A CONDITION THAT IS
2 MATERIALLY DANGEROUS OR HAZARDOUS TO THE TENANT'S LIFE, HEALTH,
3 OR SAFETY; AND

4 (c) THE LANDLORD HAS RECEIVED WRITTEN NOTICE OF THE
5 CONDITION DESCRIBED IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION
6 (2) AND FAILED TO CURE THE PROBLEM WITHIN A REASONABLE TIME.

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8 (3) WHEN ANY CONDITION DESCRIBED IN SUBSECTION (2) OF THIS
9 SECTION IS CAUSED BY THE MISCONDUCT OF THE TENANT, A MEMBER OF
10 THE TENANT'S HOUSEHOLD, A GUEST OR INVITEE OF THE TENANT, OR A
11 PERSON UNDER THE TENANT'S DIRECTION OR CONTROL, THE CONDITION
12 SHALL NOT CONSTITUTE A BREACH OF THE WARRANTY OF HABITABILITY.
13 IT SHALL NOT BE MISCONDUCT BY A VICTIM OF DOMESTIC VIOLENCE OR
14 DOMESTIC ABUSE UNDER THIS SUBSECTION (3) IF THE CONDITION IS THE
15 RESULT OF DOMESTIC VIOLENCE OR DOMESTIC ABUSE AND THE LANDLORD
16 HAS BEEN GIVEN WRITTEN NOTICE AND EVIDENCE OF DOMESTIC VIOLENCE
17 OR DOMESTIC ABUSE AS DESCRIBED IN SECTION 38-12-402 (2) (a).

18 (4) IN RESPONSE TO THE NOTICE SENT PURSUANT TO PARAGRAPH
19 (c) OF SUBSECTION (2) OF THIS SECTION, A LANDLORD MAY, IN THE
20 LANDLORD'S DISCRETION, MOVE A TENANT TO A COMPARABLE UNIT AFTER
21 PAYING THE REASONABLE COSTS, ACTUALLY INCURRED, INCIDENT TO THE
22 MOVE.

23 (5) EXCEPT AS SET FORTH IN THIS PART 5, ANY AGREEMENT
24 WAIVING OR MODIFYING THE WARRANTY OF HABITABILITY SHALL BE VOID
25 AS CONTRARY TO PUBLIC POLICY.

26 (6) NOTHING IN THIS PART 5 SHALL:

27 (a) PREVENT A LANDLORD FROM TERMINATING A RENTAL

1 AGREEMENT AS A RESULT OF A CASUALTY OR CATASTROPHE TO THE
2 DWELLING UNIT WITHOUT FURTHER LIABILITY TO THE LANDLORD OR
3 TENANT; OR

4 (b) PRECLUDE A LANDLORD FROM INITIATING AN ACTION FOR
5 NONPAYMENT OF RENT, BREACH OF THE RENTAL AGREEMENT, VIOLATION
6 OF SECTION 38-12-504, OR AS PROVIDED FOR UNDER ARTICLE 40 OF TITLE
7 13, C.R.S.

8 **38-12-504. Tenant's maintenance of premises.** (1) IN ADDITION
9 TO ANY DUTIES IMPOSED UPON A TENANT BY A RENTAL AGREEMENT,
10 EVERY TENANT OF A RESIDENTIAL PREMISES HAS A DUTY TO USE THAT
11 PORTION OF THE PREMISES WITHIN THE TENANT'S CONTROL IN A
12 REASONABLY CLEAN AND SAFE MANNER. A TENANT FAILS TO MAINTAIN
13 THE PREMISES IN A REASONABLY CLEAN AND SAFE MANNER WHEN THE
14 TENANT SUBSTANTIALLY FAILS TO:

15 (a) COMPLY WITH OBLIGATIONS IMPOSED UPON TENANTS BY
16 APPLICABLE PROVISIONS OF BUILDING, HEALTH, AND HOUSING CODES
17 MATERIALLY AFFECTING HEALTH AND SAFETY;

18 (b) KEEP THE DWELLING UNIT REASONABLY CLEAN, SAFE, AND
19 SANITARY AS PERMITTED BY THE CONDITIONS OF THE UNIT;

20 (c) DISPOSE OF ASHES, GARBAGE, RUBBISH, AND OTHER WASTE
21 FROM THE DWELLING UNIT IN A CLEAN, SAFE, SANITARY, AND LEGALLY
22 COMPLIANT MANNER;

23 (d) USE IN A REASONABLE MANNER ALL ELECTRICAL, PLUMBING,
24 SANITARY, HEATING, VENTILATING, AIR-CONDITIONING, ELEVATORS, AND
25 OTHER FACILITIES AND APPLIANCES IN THE DWELLING UNIT;

26 (e) CONDUCT HIMSELF OR HERSELF AND REQUIRE OTHER PERSONS
27 IN THE RESIDENTIAL PREMISES WITHIN THE TENANT'S CONTROL TO

1 CONDUCT THEMSELVES IN A MANNER THAT DOES NOT DISTURB THEIR
2 NEIGHBORS' PEACEFUL ENJOYMENT OF THE NEIGHBORS' DWELLING UNIT;
3 OR

4 (f) PROMPTLY NOTIFY THE LANDLORD IF THE RESIDENTIAL
5 PREMISES IS UNINHABITABLE AS DEFINED IN SECTION 38-12-505 OR IF
6 THERE IS A CONDITION THAT COULD RESULT IN THE PREMISES BECOMING
7 UNINHABITABLE IF NOT REMEDIED.

8 (2) IN ADDITION TO THE DUTIES SET FORTH IN SUBSECTION (1) OF
9 THIS SECTION, A TENANT SHALL NOT KNOWINGLY, INTENTIONALLY,
10 DELIBERATELY, OR NEGLIGENTLY DESTROY, DEFACE, DAMAGE, IMPAIR, OR
11 REMOVE ANY PART OF THE RESIDENTIAL PREMISES OR KNOWINGLY PERMIT
12 ANY PERSON WITHIN HIS OR HER CONTROL TO DO SO.

13 (3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO
14 AUTHORIZE A MODIFICATION OF A LANDLORD'S OBLIGATIONS UNDER THE
15 WARRANTY OF HABITABILITY.

16 **38-12-505. Uninhabitable residential premises.** (1) A
17 RESIDENTIAL PREMISES IS DEEMED UNINHABITABLE IF IT SUBSTANTIALLY
18 LACKS ANY OF THE FOLLOWING CHARACTERISTICS:

19 (a) WATERPROOFING AND WEATHER PROTECTION OF ROOF AND
20 EXTERIOR WALLS MAINTAINED IN GOOD WORKING ORDER, INCLUDING
21 UNBROKEN WINDOWS AND DOORS;

22 (b) PLUMBING OR GAS FACILITIES THAT CONFORMED TO
23 APPLICABLE LAW IN EFFECT AT THE TIME OF INSTALLATION AND THAT ARE
24 MAINTAINED IN GOOD WORKING ORDER;

25 (c) RUNNING WATER AND REASONABLE AMOUNTS OF HOT WATER
26 AT ALL TIMES FURNISHED TO APPROPRIATE FIXTURES AND CONNECTED TO
27 A SEWAGE DISPOSAL SYSTEM APPROVED UNDER APPLICABLE LAW;

1 (d) FUNCTIONING HEATING FACILITIES THAT CONFORMED TO
2 APPLICABLE LAW AT THE TIME OF INSTALLATION AND THAT ARE
3 MAINTAINED IN GOOD WORKING ORDER;

4 (e) ELECTRICAL LIGHTING, WITH WIRING AND ELECTRICAL
5 EQUIPMENT THAT CONFORMED TO APPLICABLE LAW AT THE TIME OF
6 INSTALLATION, MAINTAINED IN GOOD WORKING ORDER;

7 (f) COMMON AREAS AND AREAS UNDER THE CONTROL OF THE
8 LANDLORD THAT ARE KEPT REASONABLY CLEAN, SANITARY, AND FREE
9 FROM ALL ACCUMULATIONS OF DEBRIS, FILTH, RUBBISH, AND GARBAGE
10 AND THAT HAVE APPROPRIATE EXTERMINATION IN RESPONSE TO THE
11 INFESTATION OF RODENTS OR VERMIN;

12 (g) APPROPRIATE EXTERMINATION IN RESPONSE TO THE
13 INFESTATION OF RODENTS OR VERMIN THROUGHOUT A RESIDENTIAL
14 PREMISES;

15 (h) AN ADEQUATE NUMBER OF APPROPRIATE EXTERIOR
16 RECEPTACLES FOR GARBAGE AND RUBBISH, IN GOOD REPAIR;

17 (i) FLOORS, STAIRWAYS, AND RAILINGS MAINTAINED IN GOOD
18 REPAIR;

19 (j) LOCKS ON ALL EXTERIOR DOORS AND LOCKS OR SECURITY
20 DEVICES ON WINDOWS DESIGNED TO BE OPENED THAT ARE MAINTAINED IN
21 GOOD WORKING ORDER; OR

22 (k) COMPLIANCE WITH ALL APPLICABLE BUILDING, HOUSING, AND
23 HEALTH CODES, WHICH, IF VIOLATED, WOULD CONSTITUTE A CONDITION
24 THAT IS DANGEROUS OR HAZARDOUS TO A TENANT'S LIFE, HEALTH, OR
25 SAFETY.

26 (2) NO DEFICIENCY IN THE COMMON AREA SHALL RENDER A
27 RESIDENTIAL PREMISES UNINHABITABLE AS SET FORTH IN SUBSECTION (1)

1 OF THIS SECTION, UNLESS IT MATERIALLY AND SUBSTANTIALLY LIMITS THE
2 TENANT'S USE OF HIS OR HER DWELLING UNIT.

3 (3) UNLESS OTHERWISE STATED IN SECTION 38-12-506, PRIOR TO
4 BEING LEASED TO A TENANT, A RESIDENTIAL PREMISES MUST COMPLY WITH
5 THE REQUIREMENTS SET FORTH IN SECTION 38-12-503 (1), (2) (a), AND
6 (2) (b).

7 **38-12-506. Opt-out.** (1) IF A DWELLING UNIT IS CONTAINED
8 WITHIN A MOBILE HOME PARK, AS DEFINED IN SECTION 38-12-201.5 (3), OR
9 IF THERE ARE FOUR OR FEWER DWELLING UNITS SHARING COMMON WALLS
10 OR LOCATED ON THE SAME PARCEL, AS DEFINED IN SECTION 30-28-302 (5),
11 C.R.S., ALL OF WHICH HAVE THE SAME OWNER, OR IF THE DWELLING UNIT
12 IS A SINGLE-FAMILY RESIDENTIAL PREMISES:

13 (a) A GOOD FAITH RENTAL AGREEMENT MAY REQUIRE A TENANT
14 TO ASSUME THE OBLIGATION FOR ONE OR MORE OF THE CHARACTERISTICS
15 CONTAINED IN SECTION 38-12-505 (1) (f), (1) (g), AND (1) (h), AS LONG AS
16 THE REQUIREMENT IS NOT INCONSISTENT WITH ANY OBLIGATIONS IMPOSED
17 UPON A LANDLORD BY A GOVERNMENTAL ENTITY FOR THE RECEIPT OF A
18 SUBSIDY FOR THE RESIDENTIAL PREMISES; AND

19 (b) FOR ANY DWELLING UNIT FOR WHICH A LANDLORD DOES NOT
20 RECEIVE A SUBSIDY FROM ANY GOVERNMENTAL SOURCE, A LANDLORD
21 AND TENANT MAY AGREE IN WRITING THAT THE TENANT IS TO PERFORM
22 SPECIFIC REPAIRS, MAINTENANCE TASKS, ALTERATIONS, AND REMODELING,
23 BUT ONLY IF:

24 (I) THE AGREEMENT OF THE PARTIES IS ENTERED INTO IN GOOD
25 FAITH AND IS SET FORTH IN A SEPARATE WRITING SIGNED BY THE PARTIES
26 AND SUPPORTED BY ADEQUATE CONSIDERATION;

27 (II) THE WORK IS NOT NECESSARY TO CURE A FAILURE TO COMPLY

1 WITH SECTION 38-12-505 (3); AND

2 (III) SUCH AGREEMENT DOES NOT AFFECT THE OBLIGATION OF THE
3 LANDLORD TO OTHER TENANTS' RESIDENTIAL PREMISES.

4 (2) FOR A SINGLE-FAMILY RESIDENTIAL PREMISES FOR WHICH A
5 LANDLORD DOES NOT RECEIVE A SUBSIDY FROM ANY GOVERNMENTAL
6 SOURCE, A LANDLORD AND TENANT MAY AGREE IN WRITING THAT THE
7 TENANT IS TO PERFORM SPECIFIC REPAIRS, MAINTENANCE TASKS,
8 ALTERATIONS, AND REMODELING NECESSARY TO CURE A FAILURE TO
9 COMPLY WITH SECTION 38-12-505 (3), BUT ONLY IF:

10 (a) THE AGREEMENT OF THE LANDLORD AND TENANT IS ENTERED
11 INTO IN GOOD FAITH AND IS SET FORTH IN A WRITING THAT IS SEPARATE
12 FROM THE RENTAL AGREEMENT, SIGNED BY THE PARTIES, AND SUPPORTED
13 BY ADEQUATE CONSIDERATION; AND

14 (b) THE TENANT HAS THE REQUISITE SKILLS TO PERFORM THE
15 WORK REQUIRED TO CURE A FAILURE TO COMPLY WITH SECTION 38-12-505
16 (3).

17 (3) TO THE EXTENT THAT PERFORMANCE BY A TENANT RELATES TO
18 A CHARACTERISTIC SET FORTH IN SECTION 38-12-505 (1), THE TENANT
19 SHALL ASSUME THE OBLIGATION FOR SUCH CHARACTERISTIC.

20 (4) IF CONSISTENT WITH THIS SECTION A TENANT ASSUMES AN
21 OBLIGATION FOR A CHARACTERISTIC SET FORTH IN SECTION 38-12-505 (1),
22 THE LACK OF SUCH CHARACTERISTIC SHALL NOT MAKE A RESIDENTIAL
23 PREMISES UNINHABITABLE.

24 **38-12-507. Breach of warranty of habitability - tenant's**
25 **remedies.** (1) IF THERE IS A BREACH OF THE WARRANTY OF HABITABILITY
26 AS SET FORTH IN SECTION 38-12-503 (2), THE FOLLOWING PROVISIONS
27 SHALL APPLY:

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(a) UPON NO LESS THAN TEN AND NO MORE THAN THIRTY DAYS WRITTEN NOTICE TO THE LANDLORD SPECIFYING THE CONDITION ALLEGED TO BREACH OF THE WARRANTY OF HABITABILITY AND GIVING THE LANDLORD FIVE BUSINESS DAYS FROM THE RECEIPT OF THE WRITTEN NOTICE TO REMEDY THE BREACH, A TENANT MAY TERMINATE THE RENTAL AGREEMENT BY SURRENDERING POSSESSION OF THE DWELLING UNIT. IF THE BREACH IS REMEDIABLE BY REPAIRS, THE PAYMENT OF DAMAGES, OR OTHERWISE AND THE LANDLORD ADEQUATELY REMEDIES THE BREACH WITHIN FIVE BUSINESS DAYS OF RECEIPT OF THE NOTICE, THE RENTAL AGREEMENT SHALL NOT TERMINATE BY REASON OF THE BREACH.

(b) A TENANT MAY OBTAIN INJUNCTIVE RELIEF FOR BREACH OF THE WARRANTY OF HABITABILITY IN ANY COURT OF COMPETENT JURISDICTION. IN ANY PROCEEDING FOR INJUNCTIVE RELIEF, THE COURT SHALL DETERMINE ACTUAL DAMAGES FOR A BREACH OF THE WARRANTY AT THE TIME THE COURT ORDERS THE INJUNCTIVE RELIEF. A LANDLORD SHALL NOT BE SUBJECT TO ANY COURT ORDER FOR INJUNCTIVE RELIEF IF THE LANDLORD TENDERS THE ACTUAL DAMAGES TO THE COURT WITHIN TWO BUSINESS DAYS OF THE ORDER. UPON APPLICATION BY THE TENANT, THE COURT SHALL IMMEDIATELY RELEASE TO THE TENANT THE DAMAGES PAID BY THE LANDLORD. IF THE TENANT VACATES THE LEASED PREMISES, THE LANDLORD SHALL NOT BE PERMITTED TO RENT THE PREMISES AGAIN UNTIL SUCH TIME AS THE UNIT WOULD BE IN COMPLIANCE WITH THE WARRANTY OF HABITABILITY SET FORTH IN SECTION 38-12-503 (1).

(c) IN AN ACTION FOR POSSESSION BASED UPON NONPAYMENT OF RENT IN WHICH THE TENANT ASSERTS A DEFENSE TO POSSESSION BASED UPON THE LANDLORD'S ALLEGED BREACH OF THE WARRANTY OF

1 HABITABILITY, THE COURT SHALL ORDER THE TENANT TO PAY INTO THE
2 REGISTRY OF THE COURT AT THE TIME OF THE FILING OF THE ANSWER ALL
3 OR PART OF THE RENT ACCRUED AFTER DUE CONSIDERATION OF EXPENSES
4 ALREADY INCURRED BY THE TENANT BASED UPON THE LANDLORD'S
5 BREACH OF THE WARRANTY OF HABITABILITY.

6 (d) UPON JUDGMENT IN THE TENANT'S FAVOR FOR A CLAIM OR
7 COUNTERCLAIM OF BREACH OF THE WARRANTY OF HABITABILITY, A
8 TENANT MAY RECOVER DAMAGES DIRECTLY ARISING FROM THE BREACH,
9 WHICH MAY INCLUDE, BUT ARE NOT LIMITED TO, ANY REDUCTION IN THE
10 FAIR RENTAL VALUE OF THE DWELLING UNIT.

11 (2) IF A RENTAL AGREEMENT CONTAINS A PROVISION FOR EITHER
12 PARTY IN AN ACTION RELATED TO THE RENTAL AGREEMENT TO OBTAIN
13 ATTORNEY FEES AND COSTS, THEN THE PREVAILING PARTY IN ANY ACTION
14 BROUGHT UNDER THIS PART 5 SHALL BE ENTITLED TO RECOVER
15 REASONABLE ATTORNEY FEES AND COSTS.

16 **38-12-508. Landlord's defenses to a claim of breach of**
17 **warranty - limitations on claiming a breach.** (1) IT SHALL BE A
18 DEFENSE TO A TENANT'S CLAIM OF BREACH OF THE WARRANTY OF
19 HABITABILITY THAT THE TENANT'S ACTIONS OR INACTIONS PREVENTED
20 THE LANDLORD FROM CURING THE CONDITION UNDERLYING THE BREACH
21 OF THE WARRANTY OF HABITABILITY.

22 (2) ONLY PARTIES TO THE RENTAL AGREEMENT OR OTHER ADULT
23 RESIDENTS LISTED ON THE RENTAL AGREEMENT WHO ARE ALSO LAWFULLY
24 RESIDING IN THE DWELLING UNIT MAY ASSERT A CLAIM FOR A BREACH OF
25 THE WARRANTY OF HABITABILITY.

26 (3) A TENANT MAY NOT ASSERT A CLAIM FOR INJUNCTIVE RELIEF
27 BASED UPON THE LANDLORD'S BREACH OF THE WARRANTY OF

1 HABITABILITY OF A RESIDENTIAL PREMISES UNLESS THE TENANT HAS
2 GIVEN NOTICE TO A LOCAL GOVERNMENT WITHIN THE BOUNDARIES OF
3 WHICH THE RESIDENTIAL PREMISES IS LOCATED OF THE CONDITION
4 UNDERLYING THE BREACH THAT IS MATERIALLY DANGEROUS OR
5 HAZARDOUS TO THE TENANT'S LIFE, HEALTH, OR SAFETY.

6 (4) A TENANT MAY NOT ASSERT A BREACH OF THE WARRANTY OF
7 HABITABILITY AS A DEFENSE TO A LANDLORD'S ACTION FOR POSSESSION
8 BASED UPON A NONMONETARY VIOLATION OF THE RENTAL AGREEMENT OR
9 FOR AN ACTION FOR POSSESSION BASED UPON A NOTICE TO QUIT OR
10 VACATE.

11 (5) IF THE CONDITION ALLEGED TO BREACH THE WARRANTY OF
12 HABITABILITY IS THE RESULT OF THE ACTION OR INACTION OF A TENANT IN
13 ANOTHER DWELLING UNIT OR ANOTHER THIRD PARTY NOT UNDER THE
14 DIRECTION AND CONTROL OF THE LANDLORD AND THE LANDLORD HAS
15 TAKEN REASONABLE, NECESSARY, AND TIMELY STEPS TO ABATE THE
16 CONDITION, BUT IS UNABLE TO ABATE THE CONDITION DUE TO
17 CIRCUMSTANCES BEYOND THE LANDLORD'S REASONABLE CONTROL, THE
18 TENANT'S ONLY REMEDY SHALL BE TERMINATION OF THE RENTAL
19 AGREEMENT CONSISTENT WITH SECTION 38-12-507 (1) (a).

20 (6) FOR PUBLIC HOUSING AUTHORITIES AND OTHER HOUSING
21 PROVIDERS RECEIVING FEDERAL FINANCIAL ASSISTANCE DIRECTLY FROM
22 THE FEDERAL GOVERNMENT, NO PROVISION OF THIS PART 5 IN DIRECT
23 CONFLICT WITH ANY FEDERAL LAW OR REGULATION SHALL BE
24 ENFORCEABLE AGAINST SUCH HOUSING PROVIDER.

25 **38-12-509. Prohibition on retaliation.** (1) A LANDLORD SHALL
26 NOT RETALIATE AGAINST A TENANT FOR ALLEGING A BREACH OF THE
27 WARRANTY OF HABITABILITY BY DISCRIMINATORILY INCREASING RENT OR

1 DECREASING SERVICES OR BY BRINGING OR THREATENING TO BRING AN
2 ACTION FOR POSSESSION IN RESPONSE TO THE TENANT HAVING MADE A
3 GOOD FAITH COMPLAINT TO THE LANDLORD OR TO A GOVERNMENTAL
4 AGENCY ALLEGING A BREACH OF THE WARRANTY OF HABITABILITY.

5 (2) A LANDLORD SHALL NOT BE LIABLE FOR RETALIATION UNDER
6 THIS SECTION, UNLESS A TENANT PROVES THAT A LANDLORD BREACHED
7 THE WARRANTY OF HABITABILITY.

8 (3) REGARDLESS OF WHEN BROUGHT, AN ACTION FOR POSSESSION
9 OF THE PREMISES WHERE THE LANDLORD IS SEEKING TO TERMINATE THE
10 TENANCY FOR VIOLATION OF THE TERMS OF THE RENTAL AGREEMENT,
11 THERE SHALL BE A REBUTTABLE PRESUMPTION IN FAVOR OF THE
12 LANDLORD THAT HIS OR HER DECISION TO TERMINATE IS NOT
13 RETALIATORY. THE PRESUMPTION CREATED BY THIS SUBSECTION (3)
14 CANNOT BE REBUTTED BY EVIDENCE OF THE TIMING ALONE OF THE
15 LANDLORD'S INITIATION OF THE ACTION.

16 (4) IF THE LANDLORD HAS A RIGHT TO INCREASE RENT, TO
17 DECREASE SERVICE, OR TO TERMINATE THE TENANT'S TENANCY AT THE
18 END OF ANY TERM OF THE RENTAL AGREEMENT AND THE LANDLORD
19 EXERCISES ANY OF THESE RIGHTS, THERE SHALL BE A REBUTTABLE
20 PRESUMPTION THAT THE LANDLORD'S EXERCISE OF ANY OF THESE RIGHTS
21 WAS NOT RETALIATORY. THE PRESUMPTION OF THIS SUBSECTION (4)
22 CANNOT BE REBUTTED BY EVIDENCE OF THE TIMING ALONE OF THE
23 LANDLORD'S EXERCISE OF ANY OF THESE RIGHTS.

24 **38-12-510. Unlawful removal or exclusion.** IT SHALL BE
25 UNLAWFUL FOR A LANDLORD TO REMOVE OR EXCLUDE A TENANT FROM A
26 DWELLING UNIT WITHOUT RESORTING TO COURT PROCESS, UNLESS THE
27 REMOVAL OR EXCLUSION IS CONSISTENT WITH THE PROVISIONS OF ARTICLE

1 18.5 OF TITLE 25, C.R.S., AND THE RULES PROMULGATED BY THE STATE
2 BOARD OF HEALTH FOR THE CLEANUP OF AN ILLEGAL DRUG LABORATORY
3 OR IS WITH THE MUTUAL CONSENT OF THE LANDLORD AND TENANT OR
4 UNLESS THE DWELLING UNIT HAS BEEN ABANDONED BY THE TENANT AS
5 EVIDENCED BY THE RETURN OF KEYS, THE SUBSTANTIAL REMOVAL OF THE
6 TENANT'S PERSONAL PROPERTY, NOTICE BY THE TENANT, OR THE
7 EXTENDED ABSENCE OF THE TENANT WHILE RENT REMAINS UNPAID, ANY
8 OF WHICH WOULD CAUSE A REASONABLE PERSON TO BELIEVE THE TENANT
9 HAD PERMANENTLY SURRENDERED POSSESSION OF THE DWELLING UNIT.
10 SUCH UNLAWFUL REMOVAL OR EXCLUSION INCLUDES THE WILLFUL
11 TERMINATION OF UTILITIES OR THE WILLFUL REMOVAL OF DOORS,
12 WINDOWS, OR LOCKS TO THE PREMISES OTHER THAN AS REQUIRED FOR
13 REPAIR OR MAINTENANCE. IF THE LANDLORD WILLFULLY AND
14 UNLAWFULLY REMOVES THE TENANT FROM THE PREMISES OR WILLFULLY
15 AND UNLAWFULLY CAUSES THE TERMINATION OF HEAT, RUNNING WATER,
16 HOT WATER, ELECTRIC, GAS, OR OTHER ESSENTIAL SERVICES, THE TENANT
17 MAY SEEK ANY REMEDY AVAILABLE UNDER THE LAW, INCLUDING THIS
18 PART 5.

19 **38-12-511. Application.** (1) UNLESS CREATED TO AVOID ITS
20 APPLICATION, THIS PART 5 SHALL NOT APPLY TO ANY OF THE FOLLOWING
21 ARRANGEMENTS:

22 (a) RESIDENCE AT A PUBLIC OR PRIVATE INSTITUTION, IF SUCH
23 RESIDENCE IS INCIDENTAL TO DETENTION OR THE PROVISION OF MEDICAL,
24 GERIATRIC, EDUCATION, COUNSELING, RELIGIOUS, OR SIMILAR SERVICE;

25 (b) OCCUPANCY UNDER A CONTRACT OF SALE OF A DWELLING UNIT
26 OR THE PROPERTY OF WHICH IT IS A PART, IF THE OCCUPANT IS THE
27 PURCHASER, SELLER, OR A PERSON WHO SUCCEEDS TO HIS OR HER

1 INTEREST;

2 (c) OCCUPANCY BY A MEMBER OF A FRATERNAL OR SOCIAL
3 ORGANIZATION IN THE PORTION OF A STRUCTURE OPERATED FOR THE
4 BENEFIT OF THE ORGANIZATION;

5 (d) TRANSIENT OCCUPANCY IN A HOTEL OR MOTEL THAT LASTS
6 LESS THAN THIRTY DAYS;

7 (e) OCCUPANCY BY AN EMPLOYEE OR INDEPENDENT CONTRACTOR
8 WHOSE RIGHT TO OCCUPANCY IS CONDITIONAL UPON PERFORMANCE OF
9 SERVICES FOR AN EMPLOYER OR CONTRACTOR;

10 (f) OCCUPANCY BY AN OWNER OF A CONDOMINIUM UNIT OR A
11 HOLDER OF A PROPRIETARY LEASE IN A COOPERATIVE;

12 (g) OCCUPANCY IN A STRUCTURE THAT IS LOCATED WITHIN AN
13 UNINCORPORATED AREA OF A COUNTY, DOES NOT RECEIVE WATER, HEAT,
14 AND SEWER SERVICES FROM A PUBLIC ENTITY, AND IS RENTED FOR
15 RECREATIONAL PURPOSES, SUCH AS A HUNTING CABIN, YURT, HUT, OR
16 OTHER SIMILAR STRUCTURE;

17 (h) OCCUPANCY UNDER RENTAL AGREEMENT COVERING A
18 RESIDENTIAL PREMISES USED BY THE OCCUPANT PRIMARILY FOR
19 AGRICULTURAL PURPOSES; OR

20 (i) ANY RELATIONSHIP BETWEEN THE OWNER OF A MOBILE HOME
21 PARK AND THE OWNER OF A MOBILE HOME SITUATED IN THE PARK.

22 (2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT
23 REMEDIES AVAILABLE ELSEWHERE IN LAW FOR A TENANT TO SEEK TO
24 MAINTAIN SAFE AND SANITARY HOUSING.

25 **SECTION 4. Effective date - applicability.** (1) This act shall
26 take effect September 1, 2008.

27 (2) However, if a referendum petition is filed against this act or

1 an item, section, or part of this act during the 90-day period after final
2 adjournment of the general assembly that is allowed for submitting a
3 referendum petition pursuant to article V, section 1 (3) of the state
4 constitution, then the act, item, section, or part, shall not take effect unless
5 approved by the people at a biennial regular general election and shall
6 take effect on the date specified in subsection (1) or on the date of the
7 official declaration of the vote thereon by proclamation of the governor,
8 whichever is later.

9 (3) This act shall apply to rental agreements entered into or
10 extended or renewed on or after the effective date of this act.