

OFF-CAMPUS HOUSING TIPS

Top 11 Tips for Landlords & Tenants

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(The following are general tips drafted for no particular situation and do not constitute legal advice for any particular client. In the event of a specific question or conflict, you should seek the advice of a lawyer.)

TIP 1 (landlords & tenants)—Give it a closer look. Request an inspection by a professional inspector. Ask the other party to pay for the inspection or to split the cost with you. You should be able to find a professional to perform a comprehensive inspection for about \$250. Under Colorado's premises liability statute, C.R.S. §13-21-115, you (landlords, property managers, and tenants) may be subject to liability for damages and injuries to visitors caused by dangerous conditions or activities you knew or should have known of. With an inspection, you will be better able to identify dangerous conditions and either demand that they be fixed or decide to reside elsewhere. If the landlord promises to repair the problem (or be responsible for repairs generally), it would be wise to get that promise in writing. An inspection also provides both parties with a third person who might be valuable in the event of a security deposit dispute.

TIP 2 (tenants)—Talk to the former tenants. Ask about their dealings with the landlord. There is plenty of gray area in every landlord/tenant relationship. If you are dissatisfied with something, and even if you are on the better legal side of the dispute, it might not be worth taking to court. If you know your landlord is petty, particular, or difficult, you might want to look elsewhere. Or, if the place is too good to turn down, be prepared to endure the behavior reported by the former tenants.

TIP 3 (landlords)—Get references, guarantors, co-signors, etc. You are preparing to entrust a valuable asset with college students, some of whom might not be especially responsible, some of whom might not be from Colorado, some of whom might not have the ability to satisfy a judgment in excess of their security deposit. In the event something goes wrong, you might be chasing a judgment-proof and difficult-to-find former tenant. You should try to prevent such a situation by selecting tenants whose histories suggest responsible renting. To the extent you are able to obtain the guarantees of parents or other 3rd parties, you will be better able to recover the damages you have sustained.

TIP 4 (tenants)—Know your roommates. A bad roommate will cause many problems, especially if the roommate doesn't pay rent. Your landlord is NOT responsible to resolve disputes between roommates, and if your lease makes you jointly and severally liable with your roommates (see Tip 6), you will be required to pay what your roommate does not. You might consider a written agreement between roommates that would allow the responsible roommate to sue the irresponsible roommate in the event the irresponsible roommate stops paying rent. Bad roommates can be a bigger problem than a bad landlord.

TIP 5 (landlords & tenants)—Use a well-written lease. A written lease isn't even required in most cases, but something more thorough than a note on a cocktail napkin from the Dugout is a good idea. There are ways to protect your interests by a written lease that are otherwise unavailable. For example, landlords are allowed up to 60 days to return a security deposit as opposed to the 30-day default deadline as set forth in C.R.S. §38-12-103. If you (the landlord) would like to check in from time to time, make sure you give yourself that ability in the lease. If the landlord wants several options if things go bad, the lease should provide for joint and several liability.

TIP 6 (tenants)—READ THE LEASE. If you do not understand its terms, seek advice or educate yourself about the lease. For example, if you sign a lease that renders you jointly and severally liable for the obligations of your roommates, it would be nice to know what joint and several liability means. Here's an example: You and 14 of your closest friends have found the best house in town. It has 15 bedrooms, 15 bathrooms, a 50" flat screen in each room, and three maintenance-free hot tubs. Even better, it costs only \$300 per person/month. All goes well until all 14 of your friends leave to participate in the next Amazing Race, leaving you behind before the expiration of the lease. Because you have some money, or because your landlord was able to secure the signature of your parents as

guarantors, your landlord is now knocking on your door with the next month's rent bill of \$4,500. You are on the hook for the entire amount. That's joint and several liability. If you have failed to heed Tip 4, you should read the provision that governs assignments and subleases.

TIP 7 (landlords & especially tenants)—Do a walk-through **before** you move in and either agree in writing to the nature of the existing problems, take photos of those problems, or use a video camera to document the condition. It's nice to receive some cash at the end of your lease when your security deposit is returned. If you document the existing problems and don't cause more, a decent landlord will be more likely to return the majority of the deposit. Similar documentation at the end of your tenancy is also a good idea. From either party's perspective, when both sides document or agree to the condition of the premises when the tenant moves in, both parties reduce the likelihood of a dispute when the tenant moves out (and the resulting attorney's fees.)

TIP 8 (landlords & tenants)—Abide by the terms of your lease. Unless you and the other party agree to modify the terms of the lease (which you should rely upon only if in writing), the terms of the lease control your relationship.

TIP 9 (tenants)—Clean thoroughly when you leave. If you don't have enough time and your used book money nets even more than expected, pay someone else to clean the place. I suspect your landlord would deduct more from your security deposit than you would pay to have it cleaned.

TIP 10 (landlords & tenants)—Read, understand, and live by C.R.S. §38-12-103.

(1) A landlord shall, within one month after the termination of a lease or surrender and acceptance of the premises, whichever occurs last, return to the tenant the full security deposit deposited with the landlord by the tenant, unless the lease agreement specifies a longer period of time, but not to exceed sixty days. No security deposit shall be retained to cover normal wear and tear. In the event that actual cause exists for retaining any portion of the security deposit, the landlord shall provide the tenant with a written statement listing the exact reasons for the retention of any portion of the security deposit. When the statement is delivered, it shall be accompanied by payment of the difference between any sum deposited and the amount retained. The landlord is deemed to have complied with this section by mailing said statement and any payment required to the last known address of the tenant. Nothing in this section shall preclude the landlord from retaining the security deposit for nonpayment of rent, abandonment of the premises, or nonpayment of utility charges, repair work, or cleaning contracted for by the tenant.

(2) The failure of a landlord to provide a written statement within the required time specified in subsection (1) of this section shall work a forfeiture of all his rights to withhold any portion of the security deposit under this section.

(3)(a) The willful retention of a security deposit in violation of this section shall render a landlord liable for treble the amount of that portion of the security deposit wrongfully withheld from the tenant, together with reasonable attorneys' fees and court costs; except that the tenant has the obligation to give notice to the landlord of his intention to file legal proceedings a minimum of seven days prior to filing said action.

(b) In any court action brought by a tenant under this section, the landlord shall bear the burden of proving that his withholding of the security deposit or any portion of it was not wrongful.

(4) Upon cessation of his interest in the dwelling unit, whether by sale, assignment, death, appointment of a receiver, or otherwise, the person in possession of the security deposit, including but not limited to the landlord, his agent, or his executor, shall, within a reasonable time:

(a) Transfer the funds, or any remainder after lawful deductions under subsection (1) of this section, to the landlord's successor in interest and notify the tenant by mail of such transfer and of the transferee's name and address; or

(b) Return the funds, or any remainder after lawful deductions under subsection (1) of this section, to the tenant.

(5) Upon compliance with subsection (4) of this section, the person in possession of the security deposit shall be relieved of further liability.

(6) Upon receipt of transferred funds under subsection (4)(a) of this section, the transferee, in relation to such funds, shall be deemed to have all of the rights and obligations of a landlord holding the funds as a security deposit.

(7) Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this section for the benefit of a tenant or members of his household is waived shall be deemed to be against public policy and shall be void.

TIP 11 (landlords & tenants)—A new law (C.R.S. §38-12-501 et seq.) requires the landlord to provide you with premises that are “fit for human habitation.” The law defines what is not fit for human habitation, what to do if you believe the premises have fallen below that standard, how to notify the landlord, and what you can do if the landlord fails to fix the problems. The law also imposes responsibility upon tenants to maintain the premises. Tenants should learn about this new law before making any decision to leave, withhold rent, etc.