

Understanding the Warranty of Habitability



Panel Discussion

Panel members:

- **Judge John Stenger**, Rio Grande County Court Judge
- **Chad Keizer**, Managing Attorney, Colorado Legal Services

Facilitated by

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Sponsored by the 12th Judicial District Access to Justice Committee.

Why are we here?



Access to Justice Committee

- To equip tenants and landlords with knowledge about their rights and obligations under Colorado's Warranty of Habitability.
- To ensure landlords understand their legal obligations to maintain habitable properties and avoid costly disputes.
 - Less Confusion = Less Conflict

What to Expect:

An Overview of Colorado's Warranty of Habitability Laws

Recent Updates to the Warranty of Habitability

Tenant Guidance on Habitability Issues

Landlord Obligations and Timelines

Resources for Habitability Issues

NOT COVERED: Mobile Homes, Eviction Process, Trial Guidance or Strategy

What is the Warranty of Habitability?

- A law in Colorado that requires nearly all rental units in the state to meet minimum standards.
- The law applies even if there is not a written lease.
- The Warranty of Habitability cannot be waived.



Examples of What the Warranty of Habitability Covers:

Running Water

Hot Water

Reasonably Clean
Common Areas

Free of Pests (e.g.
Mice, Rats, Insect
Problems)

Water-Tight Roofs,
Exterior
Walls/Doors/Windows

Adequate Outdoor
Trashcans/Dumpsters

Properly Maintained
Doors, Stairways,
Elevators, and
Railings

Indoor Heating

Electricity and Proper
Wiring

Accessible Fire Exits

Functioning Door
Locks on All Exterior
Doors and Windows

Free of Mold that
Threatens a Tenant's
Health or Safety

Compliance with Local
Codes (Building, Fire,
Health, Housing, etc.)

Functioning
Appliances

Functioning AC (if one
is provided)

And More... (Catch All
Provision)

Before a Lease is Signed: Avoiding Problems Early

TENANTS:

- Any attempts to waive the Warranty of Habitability in your lease are NOT enforceable
- If you do not have a written lease, it still applies!

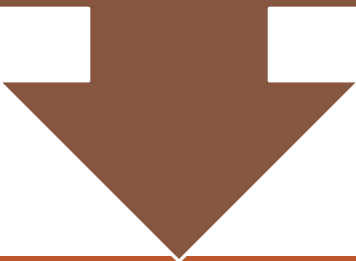
LANDLORDS:

- The rental unit must be habitable before it is leased



What ***must*** be included in leases?

Leases need to reflect a landlord's duty to maintain habitability throughout the tenancy.



All leases must include a bilingual (English/Spanish), **bold** statement informing tenants of:

Their right to safe and healthy housing.

How to report uninhabitable conditions.

During the Lease



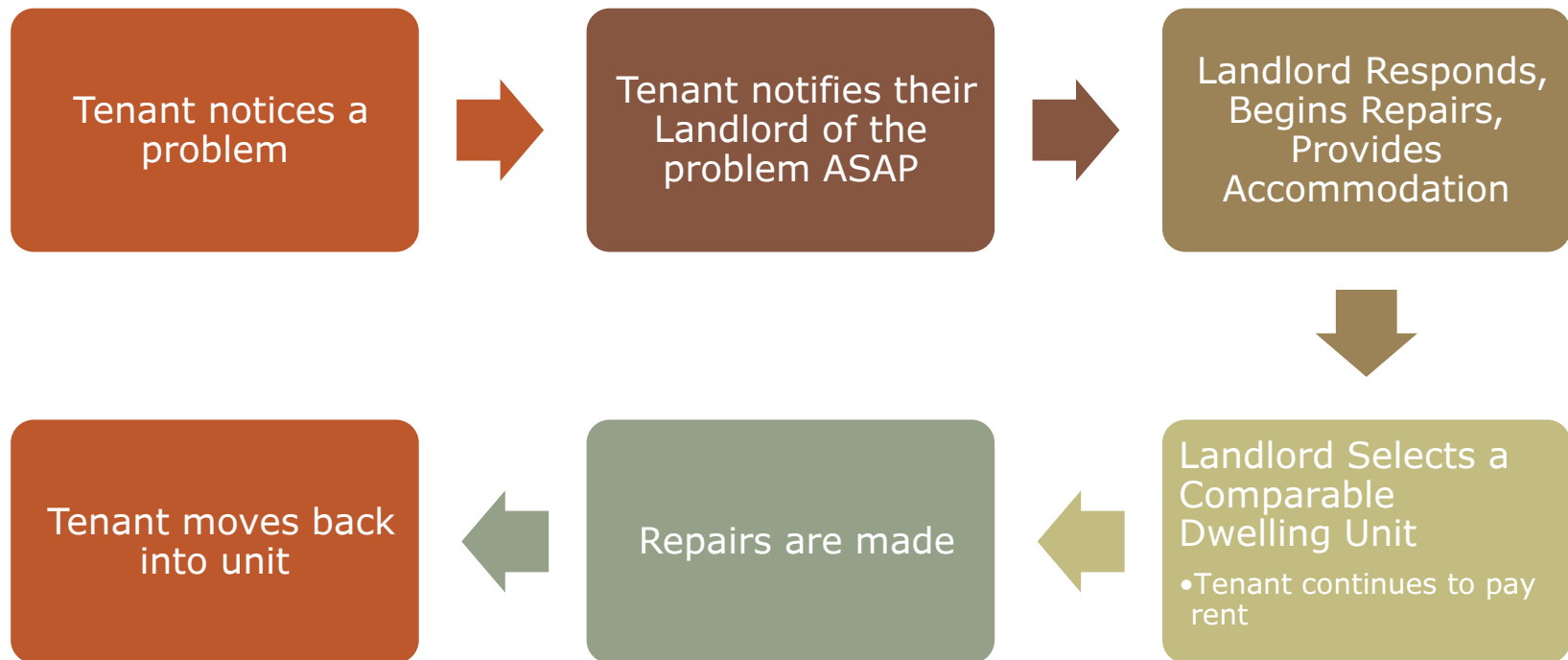
TENANTS

- Are responsible for the damage that you do to the unit.
- The Warranty of Habitability does NOT cover problems that **the tenant** caused. This includes damages caused by your:
 - Family
 - Guests

LANDLORDS

- Are required to keep records of problems with your units that might make them uninhabitable or unsafe. This includes:
 - Letters, Emails, Texts
 - Notices you issue
 - Documents showing actions you took to fix the issue.

How the Warranty of Habitability Works:



An Example of How It Works:

Terry the Tenant has a big family and they live together in a house with 7 beds

One chilly day in December, the heater stops working.



What should Terry the Tenant do?

Give notice to his landlord, Lisa ASAP

Notice should always be in writing using whatever method his landlord normally communicates with him (Email, Letters, Texting, Etc.) or what is required by the lease.



- Describe the problem and send pictures (if helpful.)
- Be specific and keep a copy of it
- Give his landlord, Lisa permission to enter, inspect and make repairs.

Tell his landlord what steps he will take if she does not take action.

Allow his landlord access to his rental so she can make the repairs.

An Example (cont.):

That night, Lisa the Landlord receives an email from Terry (following the directions from the last slide) asking Lisa to repair the heater.

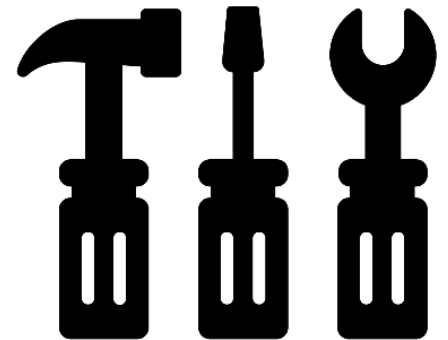


Whose Responsibility is it to Fix the Problem?

Generally, it is always the **landlord's** duty to fix a Warranty of Habitability problem.

Exception for single family homes in certain circumstances where there is a:

- There is a separate written agreement (not part of the lease)
- The tenant has adequate skills to make the repair
- The repair does not endanger the tenant's health or safety
- The agreement is made in good faith and for adequate consideration



Respond

Respond to the tenant's notice within 24 hours

- Must inform the tenant of the steps you will take to fix the condition.
- Include an estimated start and completion date for repairs.

Begin

Begin repairs promptly

- Within 24 hours if the condition threatens the tenant's health or safety
- Within 72 hours for other habitability issues

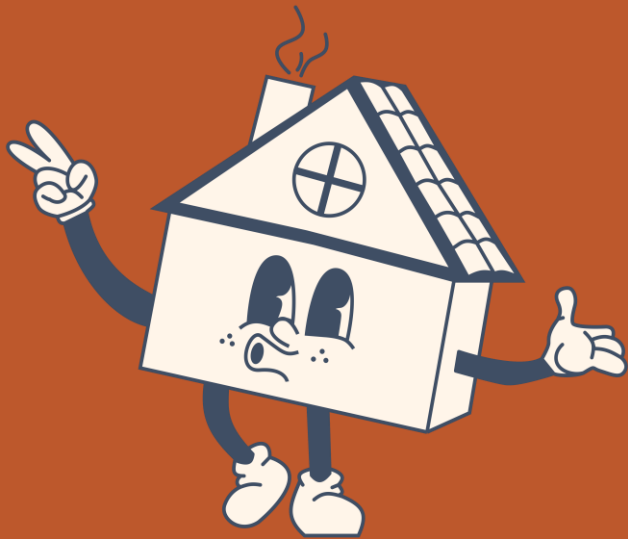
Provide

If tenant's health or safety is threatened, **provide**

- A comparable dwelling unit or hotel room at the tenant's request

What should Lisa the Landlord do?

What is a "Comparable Dwelling Unit?"



Comparable Dwelling Units can be:

Another Rental Unit

A Hotel Room

In both cases, Lisa can pick the place, but cannot charge Terry extra rent or fees.

Terry still has to pay rent while repairs are taking place

How Lisa Should Choose a "Comparable Dwelling Unit"



Within 5 Miles of Terry's Rental

- Must be habitable
- Default choice under the law

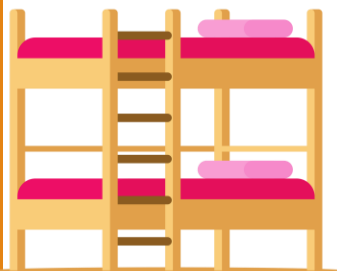
More than 5 miles but less than 10 Miles of Terry's Rental

- Must be habitable
- Used if the comparable dwelling/hotel is "substantially less expensive than other options..."

Further than 10 Miles from Terry's Rental

- Must be habitable
- Only used if there are no other options within 10 miles of a tenant's unit.
- Must be the "nearest available..."

Must have the same number of beds as rental unit. (7)



If the Terry family needs to stay in a comparable unit for more than two days:

Comparable Unit MUST have:

- Refrigerator (with a freezer!)

Range Stove or Oven



If the comparable unit does not have the required appliances

Lisa needs to provide each member of the household a daily amount for meals and incidentals

- At least \$68 each (per day) in the SLV

If Lisa fails
to fix
Terry's
problem, he
has a few
options:



Contact Lisa the
Landlord again

Write Lisa and tell her
if she doesn't fix the
problem he is moving
out in 10-60 days

Contact an attorney

Contact his local
government agencies
(Health, Building
Codes, etc.)

File a lawsuit

Use the Warranty of
Habitability as a
Defense in an Eviction
Case

Warranty of Habitability as an Affirmative Defense:

- Tenants (like Terry) can assert a breach of the warranty of habitability as an affirmative defense in eviction cases
 - An ***affirmative defense*** is a shield a tenant can raise to protect them from liability.
- A breach happens if:
 - The property is uninhabitable or there is a condition that materially interferes with a tenant's life, health, or safety

AND

- A landlord fails to act after being given notice.



Terry the Tenant's actions or inactions prevented Lisa from fixing the problem:

Lisa's defenses (if Terry didn't cause the problem):

Terry refused to provide or accept a proposed reasonable date and time for Lisa to fix the unit

Terry unreasonably denied entry into the unit

(Catch all)
Terry engaged in an actions (or inactions) that unreasonably delayed or stopped Lisa from fixing the unit.

Evictions & Affirmative Defenses

If the affirmative defense is proven:

A court must dismiss the eviction case

If not proven:

The eviction case continues.

Other Options Terry the Tenant Has

- Tenants can sue their landlord for a court order requiring their landlord to fix the condition.
 - Sometimes, Tenants can get an “immediate temporary restraining order” requiring their landlord to fix the issue.
- Tenants can terminate their lease and move out without financial penalty, as long as they give another notice to their landlord.
- Tenants can pay to have the issue fixed themselves instead of paying rent. (*But this is complicated and important to do it right!*)

Retaliation is Illegal



Protected Activities

Complaining About the Conditions in Your Unit or Repairs that are Needed:

To the landlord

To an organization

- Homeless shelter
- Non-Profit
- Tenant Advocacy Group

Joining, Participating, or Organizing in:

A Tenant's association

Other Tenant Groups

Taking Other Protected Actions:

Suing your landlord for not making repairs

Breaking the lease because the needed repairs haven't been completed

Hiring someone else to fix the problem

Harmful Reactions

Raising Rent

Charging New or
Made-Up Fees or
Penalties

Deciding not to
renew without a
good reason

Threatening
eviction without a
reason

Trying to evict
without going to
court first

Changing the way things
are done like:

- Trash Pickup
- Snow Removal
- Rent Payments

Suddenly enforcing
rules that were
never enforced in
the past

Threatening,
Intimidating,
Harassing a Tenant
or Their family.

Recent Changes... as of 2025



The State of Colorado, counties, cities, and municipalities can bring court cases to enforce the warranty of habitability.

- Beginning in January 2026
- Same penalties available to municipalities as are available to tenants whose landlords violate the warranty of habitability.

Resources for Habitability Issues

Colorado Legal
Services: Alamosa
coloradolegalservices.org

Free legal
assistance for
low-income
tenants facing
habitability
issues.

2-1-1

<https://search.211colorado.org>

Referrals for
housing
assistance, utility
support, food,
and legal aid

If habitability
issues are
causing financial
hardship or
health concerns.

La Puente Home,
Inc.

www.lapuentehome.org

(719)589-5909

Programs
available for
rent or utility
assistance,
among other
needs

Questions?

