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An Act

HOUSE BILL 23-1254

BY REPRESENTATIVE(S) Brown and Mabrey, Amabile, deGruy Kennedy, Dickson, English, Epps, Froelich, Garcia, Gonzales-Gutierrez, Herod, Jodeh, Joseph, Lindsay, Lindstedt, Michaelson Jenet, Ortiz, Ricks, Sharbini, Sirota, Story, Titone, Velasco, Vigil, Weissman, McCluskie;
also SENATOR(S) Cutter, Buckner, Exum, Fields, Hansen, Jaquez Lewis, Priola, Sullivan.

CONCERNING THE CONDITIONS COVERED UNDER THE WARRANTY OF HABITABILITY FOR RESIDENTIAL PREMISES, AND, IN CONNECTION THEREWITH, SPECIFYING A LANDLORD'S REQUIREMENTS TO REMEDIATE A RESIDENTIAL PREMISES THAT IS DAMAGED DUE TO AN ENVIRONMENTAL PUBLIC HEALTH EVENT, EXPANDING WHAT CONSTITUTES RETALIATION BY A LANDLORD, AND DESCRIBING SITUATIONS IN WHICH A TENANT MAY TERMINATE A LEASE AFTER THE PREMISES HAS BEEN DAMAGED DUE TO AN ENVIRONMENTAL PUBLIC HEALTH EVENT.

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

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(a) Colorado has experienced record-breaking wildfires in recent years, including the Marshall fire, which burned over 6,000 acres and nearly 1,100 homes in a highly urbanized area, resulting in more than \$500 million in damages;

(b) After the Marshall fire, many renters struggled to secure safe, habitable housing due to significant damage from smoke, ash, and other air contaminants;

(c) It is typical for nearby residents to have concerns about the habitability of their residential premises after being subjected to an environmental public health event;

(d) After an environmental public health event, residential premises must be returned to a condition that protects the health and safety of residents from environmental contaminants, such as smoke, ash, and other toxic materials related to an environmental public health event; and

(e) There is a need to promote the remediation of residential premises so that landlords, tenants, and insurance companies understand what remediation must be done and who is responsible for the remediation to make the premises habitable after an environmental public health event.

(2) Therefore, the general assembly declares that it is in the best interest of Colorado residents to protect the health and safety of residents by ensuring that their homes are returned to a healthy, habitable, and safe condition after incurring damage due to an environmental public health event.

SECTION 2. In Colorado Revised Statutes, 38-12-502, **add** (4.5) and (10) as follows:

38-12-502. Definitions. As used in this part 5 and part 8 of this article 12, unless the context otherwise requires:

(4.5) "ENVIRONMENTAL PUBLIC HEALTH EVENT" MEANS A NATURAL DISASTER OR AN ENVIRONMENTAL EVENT, SUCH AS A WILDFIRE, A FLOOD, OR A RELEASE OF TOXIC CONTAMINANTS, THAT COULD CREATE NEGATIVE HEALTH AND SAFETY IMPACTS FOR TENANTS THAT LIVE IN NEARBY

RESIDENTIAL PREMISES.

(10) "VULNERABLE POPULATION" MEANS CHILDREN, INDIVIDUALS WITH ASTHMA, INDIVIDUALS WITH DISABILITIES, INDIVIDUALS WHO ARE PREGNANT, OR ANY OTHER GROUP OF INDIVIDUALS THAT HAS HEALTH CONDITIONS THAT COULD MAKE THE INDIVIDUALS MORE SUSCEPTIBLE TO ENVIRONMENTAL CONTAMINANTS.

SECTION 3. In Colorado Revised Statutes, 38-12-503, **amend** (2)(a), (2.3), (2.5), and (4)(a) introductory portion; and **add** (2.7) as follows:

38-12-503. Warranty of habitability - notice - landlord obligations. (2) Except as described in subsection (2.2) of this section, a landlord breaches the warranty of habitability set forth in subsection (1) of this section if:

(a) A residential premises is:

(I) Uninhabitable as described in section 38-12-505 or otherwise unfit for human habitation; ~~or~~

(II) In a condition that materially interferes with the tenant's life, health, or safety; ~~and~~ OR

(III) NOT IN COMPLIANCE WITH THE STANDARDS DESCRIBED IN SECTION 38-12-505 (1)(b)(XIII) FOR THE REMEDIATION AND CLEAN UP OF A RESIDENTIAL PREMISES THAT HAS BEEN DAMAGED DUE TO AN ENVIRONMENTAL PUBLIC HEALTH EVENT; AND

(2.3) A tenant who gives a landlord WRITTEN OR electronic notice of a condition shall send ~~such~~ THE notice ~~only to the e-mail address, phone number, or electronic portal specified by the landlord in the rental agreement for communications. In the absence of such a provision in the rental agreement, the tenant shall communicate with the landlord in a manner that the landlord has previously used~~ TYPICALLY USES to communicate with the tenant. The tenant shall retain sufficient proof of delivery of the ~~electronic~~ notice.

(2.5) A landlord ~~who~~ THAT receives from a tenant written or electronic notice of a condition described by subsection (2)(a) of this

section shall:

(a) Respond to the tenant not more than twenty-four hours after receiving the notice; EXCEPT THAT A LANDLORD MAY TAKE UP TO SEVENTY-TWO HOURS TO RESPOND TO THE TENANT AFTER RECEIVING THE NOTICE WHEN THE RESIDENTIAL PREMISES IS INACCESSIBLE BECAUSE OF DAMAGE DUE TO AN ENVIRONMENTAL PUBLIC HEALTH EVENT. The response must indicate the landlord's intentions for remedying the condition, including an estimate of when the remediation will commence and when it will be completed.

(b) INFORM THE TENANT OF THE LANDLORD'S RESPONSIBILITIES UNDER SUBSECTION (4)(a) OF THIS SECTION IF THE REPORTED CONDITION CONCERNS A CONDITION DESCRIBED IN SUBSECTION (2)(a)(II) OR (2)(a)(III) OF THIS SECTION.

(2.7) (a) A LANDLORD THAT RECEIVES NOTICE FROM A TENANT OF ANY HABITABILITY ISSUES, AS DESCRIBED IN SECTION 38-12-505 (1), WITH THE TENANT'S PREMISES IS RESPONSIBLE FOR REMEDIATION OF THE RESIDENTIAL PREMISES TO A HABITABLE STANDARD AT THE LANDLORD'S EXPENSE.

(b) A LANDLORD THAT RECEIVES NOTICE FROM A TENANT OF A HABITABILITY ISSUE REGARDING A RESIDENTIAL PREMISES THAT HAS BEEN DAMAGED DUE TO AN ENVIRONMENTAL PUBLIC HEALTH EVENT SHALL COMPLY WITH THE STANDARDS DESCRIBED IN SECTION 38-12-505 (1)(b)(XIII) WITHIN A REASONABLE AMOUNT OF TIME GIVEN THE CONDITION OF THE PREMISES AND AT THE LANDLORD'S EXPENSE.

(c) A LANDLORD THAT HAS REMEDIATED A RESIDENTIAL PREMISES TO A HABITABLE STANDARD FOLLOWING AN ENVIRONMENTAL PUBLIC HEALTH EVENT MUST PROVIDE THE TENANT WITH DOCUMENTATION THAT DEMONSTRATES COMPLIANCE WITH THE STANDARDS DESCRIBED IN SECTION 38-12-505 (1)(b)(XIII).

(d) A LANDLORD'S SUBMISSION OF AN INSURANCE CLAIM FOR AN UNINHABITABLE OR A CONTAMINATED RESIDENTIAL PREMISES AFTER THE LANDLORD RECEIVES NOTICE FROM THE TENANT OF HABITABILITY ISSUES AT THE RESIDENTIAL PREMISES IS NOT CONSIDERED EVIDENCE OF REMEDIATION.

(4) (a) If the notice sent pursuant to subsection (2)(b) of this section concerns a condition that is described by subsection (2)(a)(II) OR (2)(a)(III) of this section, the landlord, at the request of the tenant, shall provide the tenant:

SECTION 4. In Colorado Revised Statutes, 38-12-505, **amend** (1)(b)(XI), (1)(b)(XII), and (3); and **add** (1)(b)(XIII) as follows:

38-12-505. Uninhabitable residential premises - habitability procedures - rules. (1) A residential premises is deemed uninhabitable if:

(b) It substantially lacks any of the following characteristics:

(XI) Locks on all exterior doors and locks or security devices on windows designed to be opened that are maintained in good working order;
or

(XII) Compliance with all applicable building, housing, and health codes, the violation of which would constitute a condition that materially interferes with the life, health, or safety of the tenant; OR

(XIII) COMPLIANCE WITH APPLICABLE STANDARDS FROM THE AMERICAN NATIONAL STANDARDS INSTITUTE, OR ITS SUCCESSOR ORGANIZATION, FOR THE REMEDIATION AND CLEAN UP OF A RESIDENTIAL PREMISES FOLLOWING AN ENVIRONMENTAL PUBLIC HEALTH EVENT.

(3) ~~Unless the rental agreement provides otherwise as permitted by section 38-12-506, Before a LANDLORD LEASES A residential premises is leased to a tenant, the LANDLORD MUST ENSURE THAT THE residential premises must comply with the requirements set forth in~~ IS FIT FOR HUMAN HABITATION IN ACCORDANCE WITH section 38-12-503 (1) and ~~(2)(a)~~ THAT THE RESIDENTIAL PREMISES IS NOT IN A CONDITION DESCRIBED IN SECTION 38-12-503 (2)(a).

SECTION 5. In Colorado Revised Statutes, 38-12-506, **add** (3) as follows:

38-12-506. Exception for certain single-family residences.

(3) NOTWITHSTANDING SUBSECTIONS (1) AND (2) OF THIS SECTION, A LANDLORD AND TENANT SHALL NOT ENTER INTO AN AGREEMENT FOR THE

REPAIR, MAINTENANCE, ALTERATION, REMODELING, OR REMEDIATION OF A RESIDENTIAL PREMISES THAT IS NECESSARY TO COMPLY WITH SECTION 38-12-503 THAT WOULD ENDANGER THE HEALTH OR SAFETY OF THE TENANT.

SECTION 6. In Colorado Revised Statutes, 38-12-507, **amend** (1)(b)(I)(B); and **add** (4) and (5) as follows:

38-12-507. Breach of warranty of habitability - tenant's remedies. (1) If there is a breach of the warranty of habitability as set forth in section 38-12-503 (2):

(b) (I) A tenant may obtain injunctive relief for breach of the warranty of habitability in any county or district court of competent jurisdiction. In a 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 is not subject to any court order for injunctive relief if:

(B) The proceeding for injunctive relief does not concern a condition described in section 38-12-503 (2)(a)(II) OR (2)(a)(III) that has not been repaired or remedied.

(4) IF A RESIDENTIAL PREMISES IS UNINHABITABLE PURSUANT TO SECTION 38-12-505 (1) AFTER BEING DAMAGED DUE TO AN ENVIRONMENTAL PUBLIC HEALTH EVENT, THE TENANT MAY TERMINATE THE TENANT'S LEASE IF:

(a) THE LANDLORD HAS NOT BEEN ABLE TO REMEDIATE THE CONDITIONS OF THE RESIDENTIAL PREMISES SO THAT IT IS SAFE FOR HABITABILITY WITHIN SIXTY BUSINESS DAYS AFTER THE LANDLORD HAS RECEIVED NOTICE OF THE HABITABILITY ISSUE FROM THE TENANT;

(b) THE TENANT HAS GIVEN THE LANDLORD WRITTEN OR ELECTRONIC NOTICE THAT THE RESIDENTIAL PREMISES IS NOT SAFE FOR HABITABILITY DUE TO DAMAGE FROM AN ENVIRONMENTAL PUBLIC HEALTH EVENT; AND

(c) THE LANDLORD IS NOT ABLE TO PROVIDE ADEQUATE ALTERNATIVE HOUSING ACCOMMODATIONS FOR THE TENANT, PURSUANT TO SECTION 38-12-503 (4), FOR THE DURATION OF THE TIME THAT THE RESIDENTIAL PREMISES IS BEING REMEDIATED.

(5) NOTWITHSTANDING SUBSECTION (4) OF THIS SECTION, IF A TENANT IS A MEMBER OF A VULNERABLE POPULATION, THE TENANT MAY TERMINATE THE TENANT'S LEASE OR AGREEMENT AFTER THE RESIDENTIAL PREMISES HAS BEEN DAMAGED DUE TO AN ENVIRONMENTAL PUBLIC HEALTH EVENT IF:

(a) THE TENANT HAS GIVEN THE LANDLORD WRITTEN OR ELECTRONIC NOTICE THAT THE RESIDENTIAL PREMISES IS NOT SAFE FOR HABITABILITY DUE TO DAMAGE FROM AN ENVIRONMENTAL PUBLIC HEALTH EVENT;

(b) THE LANDLORD HAS NOT BEEN ABLE TO REMEDIATE THE CONDITIONS OF THE RESIDENTIAL PREMISES SO THAT IT IS SAFE FOR HABITABILITY FOR THE TENANT WHO IS A MEMBER OF A VULNERABLE POPULATION;

(c) THE LANDLORD IS NOT ABLE TO PROVIDE ADEQUATE ALTERNATIVE HOUSING ACCOMMODATIONS FOR THE TENANT, PURSUANT TO SECTION 38-12-503 (4), FOR THE DURATION OF THE TIME THAT THE RESIDENTIAL PREMISES IS BEING REMEDIATED; AND

(d) THE TENANT PROVIDES THE LANDLORD WITH EVIDENCE FROM A LICENSED MEDICAL DOCTOR THAT THE TENANT'S CONDITION IS SUCH THAT TO CONTINUE LIVING IN A RESIDENTIAL PREMISES THAT HAS BEEN DAMAGED DUE TO AN ENVIRONMENTAL PUBLIC HEALTH EVENT WOULD BE DETRIMENTAL TO THE TENANT'S HEALTH, SAFETY, OR QUALITY OF LIFE.

SECTION 7. In Colorado Revised Statutes, 38-12-509, **amend** (1); and **add** (1.5) as follows:

38-12-509. Prohibition on retaliation. (1) (a) A landlord shall not retaliate against a tenant by ~~increasing rent or decreasing services or by bringing or threatening to bring an action for possession~~ ENGAGING IN ANY OF THE ACTIVITIES SPECIFIED IN SUBSECTION (1)(b) OF THIS SECTION in response to the tenant:

(a) (I) Having made a good faith complaint to the landlord or to a governmental agency alleging a condition described by section 38-12-505 (1) or any condition that materially interferes with the life, health, or safety of the tenant; or

(b) (II) Organizing or becoming a member of a tenants' association or similar organization.

(b) PROHIBITED RETALIATION INCLUDES:

(I) INCREASING RENT OR DECREASING SERVICES;

(II) TERMINATING A LEASE OR CONTRACT WITHOUT WRITTEN CONSENT OF THE TENANT EXCEPT AS OTHERWISE PROVIDED BY LAW;

(III) BRINGING OR THREATENING TO BRING AN ACTION FOR POSSESSION; OR

(IV) TAKING ACTION THAT IN ANY MANNER INTIMIDATES, THREATENS, DISCRIMINATES, OR RETALIATES AGAINST A TENANT.

(1.5) A TENANT MAY ASSERT AS A DEFENSE TO A LANDLORD'S ACTION FOR POSSESSION, INCLUDING AN ACTION FOR POSSESSION BASED ON A NONMONETARY VIOLATION OF THE RENTAL AGREEMENT OR AN ACTION FOR POSSESSION BASED UPON A NOTICE TO QUIT OR VACATE, THAT THE LANDLORD RETALIATED AGAINST THE TENANT IN VIOLATION OF SUBSECTION (1) OF THIS SECTION.

SECTION 8. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO