

**NOTICE OF UNINHABITABLE CONDITION**

STATE OF COLORADO )  
COUNTY OF \_\_\_\_\_ )  
[insert county where property is located]

TO: \_\_\_\_\_  
[insert Landlord name]

\_\_\_\_\_  
[insert Landlord address]

RE: \_\_\_\_\_  
[insert address and unit no., if applicable, of leased residential premises (the "Residential Premises")]

Pursuant to the Colorado Warranty of Habitability Law, codified at §§38-12-501, C.R.S., et seq., you are hereby notified by the undersigned Tenant that, as further detailed herein, an uninhabitable condition exists with respect to the above Residential Premises.

Specifically, (a) the Residential Premises is deemed uninhabitable as described in § 38-12-505(1), C.R.S., as it substantially lacks one or more of the following characteristics as indicated below:

Waterproofing and weather protection of roof and exterior walls maintained in good working order, including unbroken windows and doors, specifically: \_\_\_\_\_

Plumbing or gas facilities that conformed to applicable law in effect at the time of installation and that are maintained in good working order, specifically: \_\_\_\_\_

Running water and reasonable amounts of hot water at all times furnished to appropriate fixtures and connected to a sewage disposal system approved under applicable law, specifically: \_\_\_\_\_

Functioning heating facilities that conformed to applicable law at the time of installation and that are maintained in good working order, specifically: \_\_\_\_\_

Electrical lighting, with wiring and electrical equipment that conformed to applicable law at the time of installation, maintained in good working order, specifically: \_\_\_\_\_

Common areas and areas under the control of the Landlord that are kept reasonably clean, sanitary, and free from all accumulations of debris, filth, rubbish, and garbage and that have appropriate extermination in response to the infestation of rodents or vermin, specifically: \_\_\_\_\_

Appropriate extermination in response to the infestation of rodents or vermin throughout the Residential Premises, specifically: \_\_\_\_\_

\_\_\_\_\_;  
 An adequate number of appropriate exterior receptacles for garbage and rubbish, in good repair, specifically: \_\_\_\_\_

\_\_\_\_\_;  
 Floors, stairways, and railings maintained in good repair, specifically: \_\_\_\_\_

\_\_\_\_\_;  
 Locks on all exterior doors and locks or security devices on windows designed to be opened that are maintained in good working order, specifically: \_\_\_\_\_

\_\_\_\_\_;  
 Compliance with all applicable building, housing, and health codes, which, if violated, would constitute a condition that is dangerous or hazardous to Tenant's life, health, or safety, specifically: \_\_\_\_\_

OR otherwise unfit for human habitation, specifically: \_\_\_\_\_

AND

(b) the Residential Premises is in a condition that is materially dangerous or hazardous to the Tenant's life, health or safety.

AND

(c) The Landlord is hereby notified by this written notice of the condition described in paragraphs (a) and (b) above, and the Tenant further hereby demands that the Landlord cure the problem within a reasonable period of time.

In the event the Landlord fails to cure the above specified problem, the Landlord shall be deemed to breach the Warranty of Habitability imposed by applicable law and Tenant may avail him/herself of the remedies as specified in § 38-12-507, C.R.S.

\_\_\_\_\_  
[Tenant's signature]

\_\_\_\_\_  
[Date]

## CERTIFICATE OF SERVICE

State of Colorado )  
County of \_\_\_\_\_ )

I hereby certify that I provided the within Notice of Uninhabitable Condition on this \_\_\_ day of \_\_\_\_\_, 20\_\_ by:

Hand delivering a true copy to \_\_\_\_\_  
 Delivering a true copy to \_\_\_\_\_ via U.S. First Class Mail, postage prepaid, to the following address: \_\_\_\_\_

Overnight or express courier, to \_\_\_\_\_ to the following address: \_\_\_\_\_

Other \_\_\_\_\_

\_\_\_\_\_  
*[Tenant's signature]*

**NOTICE TO REMEDY BREACH  
AND NOTICE OF TERMINATION  
FOR BREACH OF WARRANTY OF HABITABILITY**

STATE OF COLORADO                    )  
COUNTY OF \_\_\_\_\_            )  
                                          [insert county where property is located]

TO: \_\_\_\_\_  
          [insert Landlord name]  
\_\_\_\_\_  
  
\_\_\_\_\_  
          [insert Landlord address]

RE: \_\_\_\_\_  
          [insert address and unit no., if applicable, of leased residential premises (the  
          "Residential Premises")]

Pursuant to the Colorado Warranty of Habitability Law, codified at §§38-12-501, C.R.S., et seq., Tenant previously provided to Landlord a Notice of Uninhabitable Condition, more specifically, such Notice was tendered to Landlord on or about \_\_\_\_\_ [insert date].

The aforementioned Notice of Uninhabitable Condition advised the Landlord pursuant to § 38-12-503(2), C.R.S., that the Residential Premises were uninhabitable as described in the Notice, and the Residential Premises were in a condition that was materially dangerous or hazardous to the Tenant's life, health or safety AND the Landlord received such written notice AND was provided a reasonable time to cure the problem.

The Landlord has failed to cure the problem within such reasonable time.  
NOW, THEREFORE, THE LANDLORD IS HEREBY NOTIFIED THAT THE LANDLORD IS IN BREACH OF THE WARRANTY OF HABITABILITY FOR THE REASONS SPECIFIED IN THE PRIOR NOTICE, SPECIFICALLY: \_\_\_\_\_

The Landlord is further notified that the Tenant intends to terminate the rental agreement by and between the Landlord and the Tenant for the Residential Premises on \_\_\_\_\_ [insert date; no less than ten and not more than thirty days from this Notice] by surrendering possession of the Residential Premises, UNLESS the Landlord remedies the aforementioned breach by repairs, the payment of damages, or otherwise AND the Landlord adequately remedies the breach within five (5) business days of receipt of this Notice.

\_\_\_\_\_  
[Tenant's signature]  
  
\_\_\_\_\_  
[Date]

**CERTIFICATE OF SERVICE**

State of Colorado )  
County of \_\_\_\_\_ )

I hereby certify that I provided the within Notice to Remedy Breach and Notice of Termination on this \_ day of \_\_\_\_\_, 20\_\_ by:

Hand delivering a true copy to \_\_\_\_\_

Delivering a true copy to \_\_\_\_\_ via U.S. First Class Mail, postage prepaid, to the following address: \_\_\_\_\_

Overnight or express courier, to \_\_\_\_\_ to the following address: \_\_\_\_\_

Other \_\_\_\_\_

\_\_\_\_\_  
*[Tenant's signature]*

**Colorado Bar Journal**

2009.

**2009, May, Pg. 59. Colorado Implied Warranty of Habitability for Residential Tenancies: An Overview**

***The Colorado Lawyer***

May 2009

Vol. 38, No. 5 [Page 59]Articles Real Estate Law

Colorado Implied Warranty of Habitability for Residential Tenancies: An Overview

by Victor M. Grimm, Denise E. Grimm

Real Estate Law articles are sponsored by the CBA Real Estate Law Section.

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About the Authors

Victor M. Grimm has been practicing in the area of real estate law for approximately twenty years, the last fifteen in Colorado. He and his wife, Denise E. Grimm, a certified paralegal, maintain a practice in Boulder, where they focus on real estate transactions, real estate litigation, and general commercial practice. The authors have published several books with Bradford Publishing Company.

Colorado's new law, the Implied Warranty of Habitability Act, creates minimum residential housing standards for rental units, with narrow exceptions. The statute also imposes additional requirements on tenants and clarifies certain ambiguities in the Forcible Entry and Unlawful Detainer Act. This law brings Colorado in line with forty-eight other states that already have adopted similar standards.

Colorado recently became the forty-ninth state to recognize an implied warranty of habitability affecting residential tenancy and imposing on landlords a duty to provide housing that is "fit for human habitation."<sup>(fn1)</sup> The new law, House Bill 08-1365 (Act), took effect on September 1, 2008, and pertains solely to residential tenancies, with few exceptions as discussed below.<sup>(fn2)</sup>

The Act imposes certain statutory duties on the landlord for ensuring compliance with the Act as to the condition of the leased premises (premises) throughout the tenancy (which standards must be met prior to commencement of

the lease); specifically articulates the physical characteristics of a premises that must be in compliance with the Act; and allows the tenant specific remedies in the event the landlord fails to comply with the Act.<sup>(fn3)</sup> These remedies can include termination of an existing lease agreement, imposition of actual damages, and injunctive relief.<sup>(fn4)</sup> Under the Act, the tenant also has new duties to maintain the premises in good, safe, and reasonable condition<sup>(fn5)</sup> and, in certain circumstances, may assume some of the duties that otherwise would be imposed on the landlord in the event certain preconditions have been met.<sup>(fn6)</sup>

This article examines the duties imposed by the Act on both landlords and tenants. It also describes the process by which a tenant may assert a breach of this implied warranty.

Conditions for Breach of the Warranty of Habitability

The Act first provides that in every rental agreement for residential premises,<sup>(fn7)</sup> the landlord is deemed to warrant that the premises are fit for human habitation. This is referred to as the warranty of habitability.<sup>(fn8)</sup> A landlord will not be liable for breach of the warranty of habitability unless each of the following elements exist:

- 1) the premises is uninhabitable as defined in subsection 505(1) of the Act or is otherwise unfit for human habitation;
- 2) the premises is in a condition that is materially dangerous or hazardous to the tenant's life, health, or safety; and
- 3) the landlord has received written notice of the condition making the premises uninhabitable and dangerous and has failed to cure the problem within a reasonable time.<sup>(fn9)</sup>

"Uninhabitable" Defined

The Act specifies what constitutes an "uninhabitable" condition that would give rise to a claim for breach of the warranty of habitability. Under the Act, a premises is deemed uninhabitable if it "substantially lacks" any of the following characteristics:

- 1) waterproofing and weather protection of roof and exterior walls maintained in good working order, including unbroken windows and doors;
- 2) plumbing and gas facilities that conformed to applicable law in effect at the time of installation and that are maintained in good working order;
- 3) running water and reasonable amounts of hot water at all times furnished to appropriate fixtures and connected to a sewage disposal system approved under applicable

law;

4) functioning heating facilities that conformed to applicable law at the time of installation and that are maintained in good working order;

5) electrical lighting, with wiring and electrical equipment that conformed to applicable law at the time of installation, maintained in good working order;

6) common areas and areas under the control of the landlord that are kept reasonably clean, sanitary, and free from all accumulations of debris, filth, rubbish, and garbage and that have appropriate extermination in response to the infestation of rodents or vermin;

7) appropriate extermination in response to the infestation of rodents or vermin throughout the premises;

8) an adequate number of appropriate exterior receptacles for garbage and rubbish in good repair;

9) floors, stairways, and railings maintained in good repair;

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

11) compliance with all applicable building, housing, and health codes, which, if violated, would constitute a condition that is dangerous or hazardous to the tenant's life, health, or safety.(fn10) This list is not exhaustive, and it must be noted that uninhabitability also may exist if the premises are found to be "otherwise unfit for human habitation."(fn11)

As noted above, uninhabitability is not the sole requirement for breach of the warranty of habitability. The premises also must be "materially dangerous or hazardous to the tenant's life, health or safety."(fn12) No further detail or definition is provided by the lawmakers as to what is materially dangerous or hazardous. However, with this explicit second element, it seems apparent that a merely uninhabitable premises is not sufficient to invoke the remedies provided under the Act; the premises must be both uninhabitable and dangerous or hazardous.

Finally, if the premises is both uninhabitable and dangerous or hazardous, the landlord must receive written notice of the condition from the tenant. The form of the notice and method of service is not prescribed by the Act. There also is no guidance provided as to what constitutes a reasonable period of time to cure a problem.(fn13) An example of a notice meeting the statutory requirements is provided at the end of this article as Appendix A.

As noted above, after receiving the notice from the tenant, a landlord has a duty to act to remedy a condition of uninhabitability or materially dangerous condition

threatening the life, health, or safety of a tenant within a reasonable time. In lieu of remedying the condition, the landlord also has the option to move the tenant to a comparable unit (the condition of which must be fit for human habitation and not dangerous or hazardous to the tenant). In that case, the landlord must bear the cost of the tenant's moving expenses.(fn14)

#### Tenant's Remedies in the Event of a Breach

The Act creates various remedies for a breach of the warranty of habitability. Termination of the rental agreement and surrender of possession by the tenant, after certain notices have been given and respective time periods have passed (as discussed in more detail below), are now available remedies under the Act. The Act goes further in providing for injunctive relief and actual damages to be awarded to the tenant by the landlord on application to the court.

#### Termination of Tenancy

The Act provides that if a breach, as defined in CRS § 38-12-503(2)(a), occurs:

[U]pon 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.(fn15)

This provision seems to indicate that the landlord must be provided two notices before a tenant may terminate the rental agreement by surrendering possession: (1) the initial written notice under CRS § 38-12-503(2)(c) providing reasonable time to cure; and (2) the notice required under CRS § 38-12-507(1)(a) that provides the landlord a last five-day period to cure.

A strict reading of the Act seems to indicate that the Act's reference in CRS § 38-12-507, stating that "if there is a breach of the Warranty of Habitability as set forth in Section 38-12-503(2)" (which allows for the initial notice and the landlord to act "within a reasonable time"), implies that the additional second notice is required prior to a tenant being able to terminate the rental agreement by surrendering possession of the premises. Accordingly, a tenant would be well-advised to give the landlord both notices described above. A form notice terminating a tenancy is included at the end of this article as Appendix B.

#### Tenant's Injunctive Relief

The Act provides that a tenant may seek injunctive relief for breach of the warranty of habitability.(fn16) This relief may be sought in any "court of competent jurisdiction."(fn17) However, in light of the limited injunctive relief available in county courts, it would

appear that such injunctive relief is available only in a district court action.(fn18)

The Act further provides that the court "shall determine actual damages for breach of a warranty at the time the court orders the injunctive relief."(fn19) It also provides that the landlord shall not be subject to the court's injunctive order if the landlord "tenders the actual damages to the court within two business days of the order."(fn20) The court, on application by the tenant, may immediately release to the tenant the damages paid by the landlord. If the premises is vacated, the Act requires the landlord to comply with the warranty of habitability prior to reletting the premises.(fn21)

Finally, for a tenant to successfully obtain injunctive relief concerning materially dangerous conditions that threaten the life, safety, or health of the tenant, the Act requires that the tenant give notice to the local government within the boundaries of which the residential premises is located of the condition underlying the breach that is materially dangerous or hazardous to the tenant's life, health, or safety.(fn22) The Act is unclear as to when such notice must be provided. The language of the Act suggests that such notice is a condition precedent to filing the complaint or motion seeking injunctive relief.

#### When Injunctive Relief is not Available

Injunctive relief is not always available to a tenant under the Act. In cases where the conditions are beyond the landlord's control and the landlord has taken reasonable and timely measures to remedy an uninhabitable condition, the Act limits the tenant's remedies to termination of the rental agreement, as long as the uninhabitable or materially dangerous condition is caused by a third party or tenant in another dwelling unit not under the direction and control of the landlord.(fn23)

#### Damages

Actual damages are recoverable by the tenant as a remedy for damages that directly arise from a breach of the warranty of habitability.(fn24) Actual damages may include "reduction in the fair rental value of the dwelling unit."(fn25) The scope and method of calculation of such damages is a topic of much debate among various jurisdictions and scholars.(fn26) The Act does not provide additional guidance on this topic.

#### Attorney Fees

The Act does not provide for automatic recovery of attorney fees and, in fact, modifies the previous law providing for automatic recovery of attorney fees. The Act provides that, in cases where provisions for the award of attorney fees are made in the rental agreement, the prevailing party in any action under the agreement is entitled to recovery of reasonable attorney fees and

costs.(fn27)

#### Breach of Warranty of Habitability Used as Counterclaim or Defense to Eviction

In the event a monetary default by the tenant occurs under a rental agreement and the landlord brings an eviction action against the tenant, the tenant may assert breach of the warranty of habitability as a defense to eviction. To assert such defense, at the time of filing the tenant's answer in the eviction proceeding, the tenant must pay into the registry of the court the rent accrued. The court may reduce this sum based on expenses that have been incurred by the tenant due to the landlord's alleged breach of the warranty of habitability.(fn28)

The Act specifically prohibits an assertion of a breach of the warranty of habitability as a defense to an eviction action if the basis of the action is a nonmonetary default by the tenant or a notice to vacate or notice to quit.(fn29) Finally, only parties to the rental agreement or "other adult residents listed on the rental agreement lawfully residing in the dwelling unit" may assert a claim for breach of the warranty of habitability.(fn30)

#### Landlord Defenses

In the event the landlord receives a notice from the tenant that a breach of the warranty of habitability has occurred, the landlord has certain defenses available under the Act.(fn31) Specifically, the landlord is given an affirmative defense to a claim for breach of the warranty of habitability if: (1) the tenant's actions or inactions prevented the landlord from curing the underlying conditions giving rise to the alleged breach;(fn32) or (2) as discussed previously, the conditions surrounding the breach are the result of the action or inaction of a tenant in another dwelling unit or third party not under the control and direction of the landlord. In the latter circumstance, the landlord will not be liable if he or she has taken reasonable, timely, and necessary steps to attempt to abate the condition, in which event the tenant may terminate the rental agreement and cannot sustain a claim for damages or injunctive relief.(fn33)

#### Tenant's Responsibilities Under the Act

The Act also addresses the tenant's responsibilities for maintenance of the premises, and imposes a duty on the tenant that the premises be maintained in a "reasonably clean and safe manner."(fn35) Specifically, the Act states that a tenant fails to maintain the premises in the aforementioned manner when the tenant fails to:

- 1) comply with obligations imposed on tenants by applicable provisions of building, health, and housing codes materially affecting health and safety;
- 2) keep the premises reasonably clean, safe, and sanitary as permitted by the conditions of the unit;



3) dispose of ashes, garbage, rubbish, and other waste from the premises in a clean, safe, sanitary, and legally compliant manner;

4) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, elevators, and other facilities and appliances in the dwelling unit;

5) conduct himself or herself, and require other persons in the residential premises within the tenant's control to conduct themselves, in a manner that does not disturb their neighbors' peaceful enjoyment of the neighbors' dwelling unit; or

6) promptly notify the landlord if the residential premises is uninhabitable as defined in CRS § 38-12-505 or if there is a condition that could result in the premises becoming uninhabitable if not remedied.(fn35) Further, the Act requires that the tenant shall not:

knowingly, intentionally, deliberately, or negligently destroy, deface, damage, impair, or remove any part of the residential premises or knowingly permit any person within his or her control to do so.(fn36)

Based on the statutory language, it appears that a violation by a tenant would be the equivalent of a breach of the lease, giving the landlord the appropriate remedies under the Forcible Entry and Unlawful Detainer Act.(fn37)

#### Opt-Out Provisions of the Act

By implication, the Act requires the landlord to be responsible for all repairs and maintenance not specified as the tenant's responsibilities. However, the landlord and tenant may agree that the tenant be responsible for certain maintenance of the premises. The Act allows for the tenants in small-scale tenancies to assume certain responsibilities, such as maintenance, alterations, and remodeling of a premises, as long as (1) the agreement does not conflict with any of the landlord's responsibilities under housing agreements for governmental subsidies (such as Section 8 programs);(fn38) (2) the work is not necessary to cure any failures to comply with the warranty of habitability; and (3) the agreement does not affect any of the landlord's obligations to other tenants' premises.(fn39)

The Act allows for this type of "opt-out" if the premises is: (1) within a mobile home park; (2) within a complex containing four or fewer dwelling units sharing common walls located on the same parcel; or (3) a single-family residential premises.(fn40) In these situations, the landlord and tenant may enter into a signed agreement separate from the lease, supported by adequate consideration, whereby the tenant assumes the specified repair or maintenance obligations.(fn41) For garbage and extermination matters only, the agreement need not be separate from the lease or written at all.(fn42)

In addition, where the premises is a single-family residence, CRS § 38-12-506(2) allows the landlord and tenant to agree in writing that the tenant will perform specific repairs, maintenance tasks, alterations, and remodeling necessary to cure a failure to comply with CRS § 38-12-505(3) (which requires that "prior to being leased to a tenant, a residential premises must comply with the requirements set forth in [the warranty of habitability]"). This agreement may be made only if (1) a separate, good faith agreement exists supported by adequate consideration; (2) the tenant has the requisite skills to perform the work required to cure a failure to comply with the warranty of habitability; (3) the tenant assumes the obligation for the "uninhabitable" characteristics; and (4) no governmental assistance under Section 8 is provided.(fn43)

#### Other Provisions of the Act

Tenants are afforded other protections under the Act that are in alignment with the previously enacted law on domestic violence. The Act anticipates instances where tenants may require protection against landlord retaliation for invocation of the tenant remedies under the Act. The Act further strengthens tenant protections against a landlord's self-help actions and clarifies the law of abandonment.

#### Victims of Domestic Violence

Consistent with the provisions in the revised forcible entry and detainer law concerning protection of victims of domestic violence,(fn44) the Act provides for an exception to a tenant's misconduct defense for the landlord in the event of domestic violence. Specifically, in cases where the tenant is a victim of domestic violence or abuse and the uninhabitable condition is a result of such abuse or violence, the condition is not considered a result of tenant misconduct and thus is not an available defense for the landlord.(fn45) In cases of domestic violence or abuse, the landlord must have been provided with written notice and evidence of such violence or abuse.(fn46)

#### Prohibition on Landlord Retaliation

The Act specifically addresses the possibility of landlord retaliation in the event a tenant avails himself or herself of the remedies for a landlord breach of the warranty of habitability. Under the Act, a landlord may not

discriminatorily [increase] rent or [decrease] services or [bring or threaten to bring] an action for possession in response to the tenant having made a good faith complaint to the landlord or a governmental agency alleging a breach of the Warranty of Habitability.(fn47)

In cases where the lease term has expired, assuming a right to rental increase or service decrease exists, a rebuttable presumption exists in favor of the landlord that the landlord did not act in retaliation by increasing the rent or decreasing services.(fn48) The Act places the

burden of proof on the tenant to prove that the acts of the landlord were taken in retaliation, and further provides that in forcible entry and detainer actions for possession, the timing of the eviction action alone is insufficient to establish an act of retaliation.(fn49)

#### Prohibition on Self-Help

The Act, clarifying forcible entry and detainer case law, prohibits a landlord from exercising self-help remedies and evicting the tenant from the premises without resort to court process. Specifically, it is illegal to physically bar a tenant from entering the premises while the premises is still subject to a lease agreement, unless certain conditions have occurred. The Act articulates what would determine a landlord's self-help remedies, such as physical removal of the tenant's personal property; physical changing of door or window locks; and termination of heating, gas, plumbing, or other essential services. The Act provides remedies for the tenant to pursue damages against a landlord in the event the landlord has undertaken self-help remedies without resort to the appropriate court process.(fn50)

#### Clarification of Abandonment

To find that a tenant has abandoned the premises, the Act states that physical evidence of such abandonment must be present, such as substantial removal of the tenant's personal property by the tenant, extended absence of the tenant while the rent remains unpaid, or return of the keys to the landlord. Mutual consent between the parties concerning the tenant's termination of the lease agreement also would support a landlord's removal of the tenant from the premises.(fn51)

#### Conclusion

The new warranty of habitability is the result of a long-term effort on the part of both landlord and tenant advocates to improve housing conditions across the state. It was created to specifically articulate minimum housing standards and give tenants the tools to enforce these requirements. The drafters also built in significant prerequisites and notice requirements, to give providers of residential housing adequate opportunities to cure problems and avoid the invocation of this law for minor or routine repair requests. As with most new legislation, the Act contains its share of ambiguities and unanswered questions, which presumably will be addressed by the courts and/or the legislature in the years to come.

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#### Footnotes:

1. CRS §§ 38-12-501 et seq. With Colorado's adoption of this law, Arkansas became the only state that does not recognize such an implied warranty either legislatively or judicially. See also Valenty, "Do Renters Have Rights?" Colorado Daily (May 6, 2008), quoting State Senator

Ron Tupa. See also Kopel, "Warranty of Habitability," available at [www.jerrykopel.com/2008/warranty-of-habitability.html](http://www.jerrykopel.com/2008/warranty-of-habitability.html).

2. The Act is applicable to "rental agreements entered into or extended or renewed on or after the effective date of this act." Laws 2008, Ch. 387, § 4(3).

3. CRS §§ 38-12-502 (Definitions), -503 (Warranty of Habitability), and -505 (Uninhabitable Premises).

4. CRS § 38-12-507 (Tenant's Remedies).

5. CRS § 38-12-504 (Tenant's Obligations).

6. CRS § 38-12-506 (Opt Out).

7. "Rental Agreement" is defined at CRS § 38-12-502(5). Not all properties are subject to the new Act or covered under the warranty of habitability. CRS § 38-12-511 specifies where exceptions to the Act arise. Generally, the following are excepted from coverage under the Act: (1) college dormitories, religious residences, medical residences, geriatric residences such as nursing and retirement homes, and counseling residences or similar services; (2) properties under contract for sale where the buyer is also the tenant; (3) residences provided as partial compensation for employment; (4) fraternities and sororities; (5) hostels, motels, and hotels in which occupancy lasts less than thirty days; (6) condominium owners; (7) residences in unincorporated areas of a county that do not provide "water, heat and sewer services from a public entity," which are rented for recreational purposes, such as "hunting cabins, yurts, huts or other similar structures"; (8) agricultural housing rentals; and (9) mobile home park lot leases. The legislature also provided that common areas are excluded from the warranty of habitability, unless the common area "materially and substantially limits the tenant's use of his or her dwelling unit." CRS § 38-12-505(2).

8. CRS § 38-12-503(1).

9. CRS § 38-12-503(2).

10. CRS § 38-12-505(1).

11. CRS § 38-12-503(2)(a). Guidance also might be gleaned from case law interpreting constructive eviction and breach of quiet enjoyment claims. The extent of the disturbance must be relatively extreme so that a reasonable person would deem the premises as unusable. See, e.g., Radinsky v. Weaver, 460 P.2d 218 (Colo. 1969) (landlord's construction on a second story caused water and dust to fall on expensive printing equipment and hole in roof of darkroom); Eskanos and Supperstein v. Irwin, 437 P.2d 403 (Colo.App. 1981) (loud music, including opera, from three sources simultaneously at tenant's quiet photo studio, in violation of specific lease provisions). See also Bedell v. Los Zapatistas, 805 P.2d 1198 (Colo. 1991); Kirkland v. Allen, 678 P.2d 568 (Colo.App. 1984)

Isbill Associates v. City and County of Denver, 666 P.2d 1117 (Colo.App. 1983).

12. CRS § 38-12-503(2)(b).

13. See J.C. Penney & Co. v. Birrell, 32 P.2d 805 (Colo. 1934) (what constitutes a reasonable time is a factual determination).

14. CRS § 38-12-503(4).

15. CRS § 38-12-507(1)(a).

16. CRS § 38-12-507(1)(b).

17. Id.

18. See C.R.C.P. 365.

19. CRS § 38-12-507(1)(b). The provisions with regard to the assessment and tender of actual damages appear to contradict the basic elements for injunctive relief under Rathke that there be no plain, speedy, and adequate remedy at law prior to imposition of the relief. Rathke v. MacFarlane, 648 P.2d 648 (Colo.1982); Rivera v. Civil Serv. Comm'n, 529 P.2d 1347, 1348 (Colo.App. 1974).

20. CRS § 38-12-507(1)(b) and (d).

21. CRS § 38-12-507(1)(b).

22. CRS § 38-12-508(3).

23. CRS § 38-12-508(5).

24. CRS § 38-12-507(1)(d).

25. Id.

26. See generally Landis, Annotation, Measure of Damages For Landlord's Breach of Implied Warranty of Habitability, 1 ALR 4th 1182 (2001); Fusco, Jr. et al., "Damages for Breach of the Implied Warranty of Habitability in Illinois-A Realistic Approach," 55 Chi. Kent L.Rev. 337 (1979); Wade v. Jobe, 818 P.2d 1007 (Utah 1991) (extensive discussion of type and scope of damages in various jurisdictions).

27. CRS §§ 38-12-507(2) and 13-40-123.

28. CRS § 38-12-507(1)(c).

29. CRS § 38-12-508(4).

30. CRS § 38-12-508(3).

31. CRS § 38-12-508.

32. CRS § 38-12-508(1).

33. CRS § 38-12-508(5).

34. CRS § 38-12-504.

35. CRS § 38-12-504(1).

36. CRS § 38-12-504(2).

37. CRS §§ 13-40-101 et seq.

38. CRS § 38-12-506(1)(a).

39. CRS § 38-12-506.

40. CRS § 38-12-506(1).

41. CRS § 38-12-506(1)(b).

42. CRS § 38-12-506(1)(a).

43. CRS § 38-12-506(2).

44. See CRS §§ 38-12-104, 13-40-104(4)(a) and (b), and 13-40-107.5(5)(c)(I).

45. CRS § 38-12-503(3).

46. Id. See CRS § 38-12-402(2)(a) with respect to the required notice.

47. CRS § 38-12-509.

48. CRS § 38-12-509(4).

49. CRS § 38-12-509(3).

50. CRS § 38-12-510.

51. Id.