Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0444.02 Ed DeCecco **SENATE BILL 10-185**

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A BILL FOR AN ACT

CONCERNING MODIFICATIONS TO THE RESIDENTIAL WARRANTY OF HABITABILITY FOR THE PURPOSE OF PROTECTING RENTERS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

Under current law, a warranty of habitability (warranty) is implied into every rental agreement for a residential premises. The bill makes the following changes related to the warranty:

! Written notice is no longer required prior to a breach of the warranty (breach) and the condition of the premises that

constitutes a breach is modified. (**Section 3**)

- ! A county court, including a small claims court, may provide injunctive relief related to a breach. (**Sections 1, 2, and 4**)
- ! A local government need not be notified prior to an injunction. (**Section 5**)
- ! The prohibition on retaliation for a tenant's alleging a breach is modified to specify damages and to eliminate presumptions. (**Section 6**)

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

SECTION 1. 13-6-105 (1) (f), Colorado Revised Statutes, is amended to read:

13-6-105. Specific limits on civil jurisdiction. (1) The county court shall have no civil jurisdiction except that specifically conferred upon it by law. In particular, it shall have no jurisdiction over the following matters:

(f) Original proceedings for the issuance of injunctions, except as provided in ~~section 13-6-104 (5)~~ SECTIONS 13-6-104 (5) AND 38-12-507 (1) (b), C.R.S., except as required to enforce restrictive covenants on residential property and to enforce the provisions of section 6-1-702.5, C.R.S., and except as otherwise specifically authorized in this article or, if there is no authorization, by rule of the Colorado supreme court.

SECTION 2. 13-6-403 (2) (h), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

13-6-403. Jurisdiction of small claims court - limitations. (2) The small claims court shall have no jurisdiction except that specifically conferred upon it by law. In particular, it shall have no jurisdiction over the following matters:

(h) Actions involving injunctive relief, except as required to:

(V) ENFORCE THE PROVISIONS OF SECTION 38-12-507 (1) (b), C.R.S.

SECTION 3. 38-12-503 (2) (b), (2) (c), and (4), Colorado Revised Statutes, are amended to read:

38-12-503. Warranty of habitability. (2) A landlord breaches the warranty of habitability set forth in subsection (1) of this section if:

(b) The residential premises is in a condition that ~~is~~ materially ~~dangerous or hazardous to the tenant's life, health, or safety~~ AFFECTS HEALTH OR SAFETY; and

(c) The landlord has ~~received written notice~~ KNOWLEDGE of the condition described in paragraphs (a) and (b) of this subsection (2) and failed to cure the problem within a reasonable time.

(4) ~~In response to the notice sent pursuant to paragraph (c) of subsection (2) of this section,~~ A landlord WHO HAS KNOWLEDGE OF THE CONDITION DESCRIBED IN PARAGRAPHS (a) AND (b) OF SUBSECTION (2) OF THIS SECTION may, in the landlord's discretion, move a tenant to a comparable unit after paying the reasonable costs, actually incurred, incident to the move.

SECTION 4. 38-12-507 (1) (b), Colorado Revised Statutes, is amended to read:

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), the following provisions shall apply:

(b) A tenant may obtain injunctive relief for breach of the warranty of habitability in any COUNTY OR DISTRICT 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).

SECTION 5. Repeal. 38-12-508 (3), Colorado Revised Statutes, is repealed as follows:

38-12-508. Landlord's defenses to a claim of breach of warranty - limitations on claiming a breach. (3) ~~A tenant may not assert a claim for injunctive relief based upon the landlord's breach of the warranty of habitability of a residential premises unless the tenant has given notice to a 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.~~

SECTION 6. 38-12-509 (2), (3), and (4), Colorado Revised Statutes, are amended to read:

38-12-509. Prohibition on retaliation. (2) ~~A landlord shall not be liable for retaliation under this section, unless a tenant proves that a landlord breached the warranty of habitability~~ IF A LANDLORD ACTS IN VIOLATION OF SUBSECTION (1) OF THIS SECTION, A TENANT MAY TERMINATE THE RENTAL AGREEMENT AND RECOVER AN AMOUNT NOT MORE THAN THREE MONTHS PERIODIC RENT OR THREE TIMES THE TENANT'S ACTUAL DAMAGES, WHICHEVER IS GREATER, AND REASONABLE ATTORNEY FEES AND COSTS.

(3) ~~Regardless of when an action for possession of the premises where the landlord is seeking to terminate the tenancy for violation of the terms of the rental agreement is brought, there shall be a rebuttable presumption in favor of the landlord that his or her decision to terminate is not retaliatory. The presumption created by this subsection (3) cannot be rebutted by evidence of the timing alone of the landlord's initiation of the action.~~

(4) ~~If the landlord has a right to increase rent, to decrease service, or to terminate the tenant's tenancy at the end of any term of the rental agreement and the landlord exercises any of these rights, there shall be a rebuttable presumption that the landlord's exercise of any of these rights was not retaliatory. The presumption of this subsection (4) cannot be rebutted by evidence of the timing alone of the landlord's exercise of any of these rights.~~

SECTION 7. Specified effective date. This act shall take effect July 1, 2010.

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, and safety.