



Mark N. Tschetter
Victor L. Sulzer
Peter E. Muccio
Lindsay E. Jasper
Karen A. Harvey
Rachel L. Winders
Kory J. Cook

Chris R. Cunningham
Jonathon G. Carlson
Jake R. Wallace
June A. Torres
Hannah J. Bevers
Daniel J. Steinhauer

3600 S. Yosemite St., Suite 828
Denver, CO 80237
303.699.3484
719.550.8004 (CS)
970.822.7020 (GJ)
thslawfirm.com

2024 LEGISLATIVE UPDATE 01- Just Cause Eviction Bill

Date: February 9, 2024
To: Tschetter Sulzer Clients
From: Tschetter Sulzer
Re: **Analysis of HB24-1098 - The Just Cause Eviction Bill**

STATUS AND TESTIFYING AGAINST THIS BILL.

The Just Cause Eviction Bill significantly infringes on landlord rights.

We urge all clients and landlords to show up and testify against this bill.

This bill is currently scheduled for hearing on Wednesday February 14, 2024, 1:30 pm, at the old state library.

Background

[HB24-1098](#) (1098 or Just Cause Bill or JCB) has been introduced in the House of Representatives. The [current bill](#) is 28 pages. JCB was introduced last year but was not passed by the Senate. The primary sponsor of the bill is [Representative Javier Mabrey](#). Representative Mabrey is an [eviction defense attorney](#) who works for the Colorado Economic Defense Project ([CED](#)) formerly known as the Covid Eviction Defense Project. The CED is a TAA (tenant advocate attorney) group.

Overview

The status quo allows landlords to terminate a tenancy for breach (noncompliance either monetary or non-monetary), and at the end of a term because the landlord wants to end the relationship. No reason is required for a landlord to end a tenancy by serving a notice to quit (NQ) for the end of term or to terminate a month to month tenancy except for subsidized

tenancies which already require good cause. While no reason is required for conventional rentals, landlords have reasons for terminating tenancies (serving NQs) otherwise they would not end the tenancies. However, because no reason is legally required (other than it must be a legitimate non-discriminatory business reason), landlords currently are not required to prove or justify those reasons. In evictions based on NQs, the only issues are whether the landlord had a right to serve a notice to quit and if the notice to quit complied with legal requirements.

The current version of JCB would drastically alter the status quo in several ways. JCB

- Creates two categories of evictions (tenant lease terminations):
 - 1. For Cause Evictions (lease breaches)
 - 2. No Fault Evictions (Notices to Quit)
- Severely limits or restricts landlord's ability to end a lease at the end of a term, renewal, or month to month period. Notices to Quit or non-renewals are limited to specific "No Fault" grounds, which would need to be proven.
- Imposes significant additional and new procedural requirements on all evictions and eviction notices, including burdensome requirements for "no fault" evictions.
- Significantly penalizes landlords for technical violations of the law.

High Level Summary

- Landlords will still be able to evict (for noncompliance) subject to additional and new procedural requirements on evictions.
- Landlords will not be able to terminate a tenancy at the end of the lease or term, including a month to month term, unless the landlord is terminating for one of the statutory reasons.
- Landlords frequently non-renew (terminate the relationship because of behavioral reasons or lease violations) because it is often more economical and easier and/or the landlord does not have to prove the violation(s). Proving the violation(s) for behavioral issues can often involve getting other tenants to volunteer to appear at Court. Now landlords desiring to terminate for behavioral reasons will have to file noncompliance eviction and prove the noncompliance case.

Applicability

The law applies to all rentals except:

- Short term rentals

- Owner occupied rentals

The JCB carves out a very small exception for owner occupied rentals with many qualifiers, i.e. single family and less than four or more units, meaning duplexes and triplexes.

Breakdown of the Just Cause Eviction Bill - HB24-1098

JCB substantially rewrites Colorado eviction law by adding an entirely new Part (Part 13) to Article 12 of Title 38. Many landlord tenant laws are located in Title 38 Article 12 such as the security deposit statute (38-12-101) and the warranty of habitability statute (38-12-501). In addition to adding a new Part to Article 12, JCB also significantly re-writes key parts of the Unlawful Detainer Act (eviction statute) located at C.R.S. § 13-40-101, et seq.

JCB divides evictions into two categories.

1. For cause evictions.
2. No-fault evictions, which are an entirely new category of evictions.

JCB adds significant new requirements to the service of eviction notices which are discussed below and many technical requirements to notices which are also discussed below.

For Cause Evictions

§1303(1) sets forth the “causes” that constitute grounds for eviction and for the most part tracks current C.R.S. § 13-40-104 with key differences.

One of those key differences is the alteration of §104(c). Currently, §104(c) allows a landlord to serve a notice to quit if a tenant holds over past the expiration of the term for which the property was leased (without having to have a reason or cause). Now, a landlord can only serve a notice to quit for holding over on commercial tenants and tenants who occupy short term rentals or owner occupied properties (duplexes, triplexes, etc.).

The specific grounds or the only allowable causes include the current key grounds for eviction:

- (d) for nonpayment of rent;
- (e) for a substantial violation described in section 13– 40– 107.5;
- (f) for a *material* violation of the lease or rental agreement; and
- (g) for a repeat violation.

Proponents of the bill will argue that inclusion of these current statutory “grounds” to evict for noncompliance is business as normal and therefore there is no change in rent evictions. This argument is deceptive because other provisions of the JCB significantly change the requirements

of “for cause” evictions (nonpayment cases). See: [Additional And New Procedural Requirements On Evictions](#).

Additionally, and significantly, the law raises the bar for noncompliance evictions and gives judges discretion to determine whether a violation is material (justifies being evicted). Specifically, now tenants can be evicted for breaching “any other condition or covenant of the agreement under which such tenant or lessee holds”. If JCB passes, the tenant violation of the lease would have to be *material*. This opens up the door for TAA groups to argue and the courts to rule that even though the tenant is breaching the lease the breach is not material so eviction is not warranted.

No Fault Evictions

Landlords are allowed to terminate tenancies at the end of the term, if the following no-fault grounds exist:

1. Demolition or conversion of residential premises.
2. Substantial repairs or renovations.
3. Landlord or family member of landlord assumes occupancy.
4. Time-limited housing.
5. Withdrawal from rental market for the purposes of selling the residential premises.

This list of grounds constitutes the exclusive reasons that a landlord could end the relationship other than a tenant’s default.

Most of these no fault grounds (NFGs) require 90 days written notice for the end of the term. The landlord has to give 120 written notice if the landlord wants to sell.

All of these NFG’s come with substantial terms, conditions, and limitations. Examples follow:

- Demolition. The landlord must demonstrate the proposed date upon which the project will commence, by providing a copy of a building permit, application for a permit, etc.
- Substantial repairs or renovations. Substantial repairs, or renovations are defined as repairs that cannot be reasonably accomplished in a safe manner with the tenant in place, and require the tenant to vacate the residential premises for at least 60 days. The statute defines specific cases, including the replacement of structural, electrical, plumbing, or mechanical systems. Also the abatement of hazardous materials. Substantial repairs do not include cosmetic improvements including painting, decorating, and minor repairs, or other work that can be performed safely with the tenant in place, and not required to

vacate the residential premises.

- **Substantial Renovations.** The notice also has to provide the tenant a description of the timeline of the substantial repairs, or renovations to the residential premises (even though the tenant would be vacating). After the tenant moves out, the landlord has to proceed without unreasonable delay to make the repairs. The landlord must notify the tenant when the repairs are completed. The tenant can return to the property, by notifying the landlord, within 30 days after receiving notice that the renovations are complete. In short, the tenant has first right of refusal for a lease based on substantially the same terms as the tenant's old lease.
- **Family Member Wants to Occupy.** Family members are limited to spouse, domestic partner, child, stepchild, parent, step, parent, grandparent, or grandchild. If the landlord terminates for this reason, the family member must move in within three months after the tenant has vacated.
- **Family Member.** Landlords can terminate a lease if the landlord (family) member wants to move in. However, the landlord can't terminate the tenant's lease for the landlord or a family member to move into the unit if a substantially equivalent unit in the same building is available. There is a rebuttable presumption that the landlord acted in bad faith if he doesn't occupy for 60 of the 90 days immediately following when the tenant vacated.
- If the landlord is selling, the landlord cannot list the property for a long-term or short-term rental for at least 90 days after the date on which the tenant is required to vacate.

Additional And New Procedural Requirements On Evictions

The changes to procedural requirements for evictions are substantial.

Service of Rent Demands is Much More Onerous

Now, a notice can be served personally or by posting, after the landlord knocks and nobody answers. The JCB would require multiple service attempts before a landlord could post.

A written notice to vacate or demand as required by § 13-40-104, § 38-12-202, § 38-12-204, or § 38-12-1303 may be served by delivering a copy thereof to each individual 18 years of age or older, occupying such premises, or by leaving such copy with some person, a member of the tenants family above the age of 15 years, residing on, or in charge of the premises, or, in case no one is on the premises after attempts a personal

service, at least once on two separate days, by posting the copy in some conspicuous place on the premises.

Multiple Language Requirements for Demands

The JCB requires:

The demand or notice required by section 13-40-104 or 38-12-1303 must be written in English, Spanish, and any other language that the landlord knows, or has reason to know, is the primary language of the tenant.

JCB Requires Demands to Be Specific

This change will open the door for tenant advocate attorneys to argue in every case that the demand was not specific enough. The JCB change requiring specificity applies to both “for cause” eviction demands and “no fault” eviction notices. The notice requirements for “no fault” eviction notices are numerous, complicated, and not clear on all issues.

Payment of Relocation Assistance

JCB requires landlords to pay two months relocation assistance (two months of rent) if the landlord proceeds with a “no fault” eviction but fails to comply with C.R.S. § 38-12-1303(3). In addition, a landlord who proceeds with a no fault eviction but fails to comply with §1303(3) has to pay an additional one month’s rent of relocation assistance if any of the following individuals reside at the premises:

- Someone under 18 or over 60;
- Someone whose total income is less than 80% of the area median income; or
- A disabled individual

Violations and Remedies

Probably, the most alarming provisions of the JCB is the right of a tenant to sue after an eviction for violations of the law.

38-12-1305. Violations - remedies. IF A LANDLORD PROCEEDS WITH AN EVICTION OF A TENANT OF A RESIDENTIAL PREMISES IN VIOLATION OF THIS PART 13, AND THE TENANT LOSES POSSESSION OF THE DWELLING UNIT, THE TENANT MAY SEEK RELIEF AS DESCRIBED IN SECTION 38-12-510 IN ADDITION TO ANY RELOCATION ASSISTANCE TO WHICH THE TENANT IS ENTITLED PURSUANT TO SECTION 38-12-1304.

Based on this provision, evictions are not final. Specifically, after a landlord files an eviction, obtains a possession judgment, and the sheriff executes a writ, the tenant could file a lawsuit for

wrongful eviction alleging that the landlord did not comply with § 1303(3). In short, after a landlord goes to court and wins, a tenant could file a subsequent lawsuit alleging that the landlord evicted them in violation of JCB and therefore the tenant is entitled to damages. For example, after the eviction case is resolved, the tenant could turn around and sue the landlord for wrongful eviction by alleging that the landlord knew or should have known that the tenant spoke Spanish and the landlord failed to serve a rent demand in Spanish.

If a tenant can file a lawsuit attacking the eviction after the fact, what is the point of the eviction? This is the exact tactic the TAAs have used to sue landlords and Tschetter Sulzer over the attorney fee issue. Even though they had a full opportunity to participate in the eviction case, they are now suing over what was previously determined in the eviction case.

Under C.R.S. § 38-12-510, a tenant is entitled to significant damages and entitled to ask the court to restore the tenant to possession of the premises.

(2) A tenant affected by any violation of this section may bring a civil action to restrain further violations and to recover damages, costs, and reasonable attorney fees. In the case of a violation, the tenant must be awarded statutory damages equal to the tenant's actual damages and the higher amount of either three times the monthly rent or five thousand dollars, as well as any other damages, attorney fees, and costs that may be owed.

(3) A court may also order that possession be restored to a tenant who was affected by a violation of this section.

C.R.S. § 38-12-510(2)&(3).

Even if JCB passes, this portion (allowing tenants to sue for violation of JCB after an eviction case is resolved) absolutely needs to be stricken otherwise evictions are not final.

Prohibition on Retaliatory Rent Increases

Tenant's will also be able to argue in any non-payment of rent case that the landlord violated JCB by increasing the rent in a retaliatory manner which is prohibited by the law.

38-12-1308. Retaliatory rent increase prohibited. A LANDLORD SHALL NOT INCREASE A TENANT'S RENT IN A DISCRIMINATORY, RETALIATORY, OR UNCONSCIONABLE MANNER TO CIRCUMVENT THE REQUIREMENTS AND PROHIBITIONS SET FORTH IN THIS PART 13.

This provision also needs to be stricken because it opens the door for tenants to challenge every rent increase. If it remains, every rent increase will be subject to potential litigation.

Conclusion

For the reasons stated above, JCB substantially rewrites Colorado eviction law by adding several new requirements which will present serious challenges in the management and execution of evictions. We urge all clients and landlords to show up and testify against this bill.