

TITLE 6
ACTIONS IN PARTICULAR CASES

CHAPTER 3
FORCIBLE ENTRY AND UNLAWFUL DETAINER

6-301. FORCIBLE ENTRY DEFINED. Every person is guilty of a forcible entry who either:

1. By breaking open doors, windows or other parts of a house, or by any kind of violence or circumstances of terror, enters upon or into any real property; or,

2. Who, after entering peaceably upon real property, turns out, by force, threats or menacing conduct, the party in possession.

[(6-301) C.C.P. 1881, sec. 795; R.S., R.C., & C.L., sec. 5091; C.S., sec. 7320; I.C.A., sec. 9-301.]

6-302. FORCIBLE DETAINER DEFINED. Every person is guilty of a forcible detainer who either:

1. By force, or by menaces and threats of violence, unlawfully holds and keeps possession of any real property, whether the same was acquired peacefully or otherwise; or

2. Who during the absence of the occupant or property owner of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, refuses to surrender the same to such former occupant or property owner. The occupant of real property, within the meaning of this subdivision, is one who, within five (5) days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands, regardless of whether the property was inhabited by the occupant of real property.

[(6-302) C.C.P. 1881, sec. 796; R.S., R.C., & C.L., sec. 5092; C.S., sec. 7321; I.C.A., sec. 9-302; am. 2017, ch. 276, sec. 1, p. 724.]

6-303. UNLAWFUL DETAINER DEFINED. A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

1. When he continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord, or the successor in estate of his landlord, if any there be; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the civil code.

2. Where he continues in possession, in person or by subtenant, without permission of his landlord, or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three (3) days' notice, in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him, and if there be a subtenant in actual occupation of the premises, also upon such subtenant. Such notice shall also notify the tenant that if a court enters judgment against him, then he will have seventy-two (72) hours, if he is a residential tenant, and seven (7) days, or longer if granted by the court, if he is a commercial tenant or a tenant with a tract of land five (5) acres or more, to remove his belongings from the premises before the landlord may remove and dispose of such property pursuant to section [6-316](#), Idaho Code. Such notice may be served at any time within one (1) year after the rent becomes due. In all

cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty (60) days after the expiration of his term without any demand of possession or notice to quit by the landlord, or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord, or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year.

3. Where he continues in possession in person, or by subtenants, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for payment of rent, and three (3) days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there be a subtenant in actual occupation of the premises, also upon such subtenant. Within three (3) days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease, or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture: provided, if the covenants and conditions of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his subtenant demanding the performance of the violated covenant or conditions of the lease. A tenant may take proceedings similar to those prescribed in this chapter, to obtain possession of premises let to an undertenant, in case of his unlawful detention of the premises underlet to him.

4. A tenant or subtenant, assigning or subletting, or committing waste upon, the demised premises contrary to the covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall, upon service of three (3) days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provisions of this chapter.

5. If any person is, or has been, engaged in the unlawful delivery, production or use of a controlled substance on the premises of the leased property during the term for which the premises are let to the tenant. For purposes of this chapter, the terms "delivery," "production," and "controlled substance" shall be defined as set forth in section [37-2701](#), Idaho Code.

[(6-303) C.C.P. 1881, sec. 797; R.S., R.C., & C.L., sec. 5093; C.S., sec. 7322; I.C.A., sec. 9-303; am. 2001, ch. 203, sec. 1, p. 691; am. 2020, ch. 340, sec. 1, p. 995.]

6-304. SERVICE OF NOTICE. The notices required by the preceding section may be served either:

1. By delivering a copy to the tenant personally; or,
2. If he be absent from his place of residence and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his place of residence; or, if such place of residence and business cannot be ascertained, or a person of suitable age or discretion cannot be found there, then by affixing a copy in a conspicuous place on the property,

and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner.

[(6-304) C.C.P. 1881, sec. 798; R.S., R.C., & C.L., sec. 5094; C.S., sec. 7323; I.C.A., sec. 9-304.]

6-305. JURISDICTION OF DISTRICT COURT. The district court of the county in which the property, or some part of it, is situated, has jurisdiction of proceedings under this chapter.

[(6-305) C.C.P. 1881, sec. 799; R.S., R.C., & C.L., sec. 5095; C.S., sec. 7324; I.C.A., sec. 9-305.]

6-308. PARTIES DEFENDANT. No person other than the tenant of the premises, and subtenant, if there be one, in the actual occupation of the premises when the notice herein provided for was served, need be made parties defendant in the proceeding, nor shall any proceeding abate nor the plaintiff be nonsuited for the nonjoinder of any persons who might have been made parties defendant; but when it appears that any of the parties served with process or appearing in the proceeding are guilty of the offense charged, judgment must be rendered against them. Any person who shall become a subtenant of the premises or any part thereof after the service of notice as provided in this chapter shall be bound by the judgment. In case a married woman be a tenant or a subtenant, her coverture shall constitute no defense; but in case her husband be not joined, or unless she be doing business as a sole trader, an execution issued upon a personal judgment against her can only be enforced against property on the premises at the commencement of the action.

[(6-308) C.C.P. 1881, sec. 802; R.S., R.C., & C.L., sec. 5098; C.S., sec. 7327; I.C.A., sec. 9-308.]

6-309. PARTIES GENERALLY. Except as provided in the preceding section, the provisions of this code relating to parties to civil actions are applicable to this proceeding.

[(6-309) C.C.P. 1881, sec. 803; R.S., R.C., & C.L., sec. 5099; C.S., sec. 7328; I.C.A., sec. 9-309.]

6-310. ACTION FOR POSSESSION -- COMPLAINT -- SUMMONS. (1) In an action exclusively for possession of a tract of land of five (5) acres or less for the nonpayment of rent, or on the grounds that a landlord has reasonable grounds to believe that any person is, or has been, engaged in the unlawful delivery, production or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant, or in the event the tenant is a tenant at sufferance pursuant to section [45-1506](#) (11), Idaho Code, it is sufficient to state in the complaint:

- (a) A description of the premises with convenient certainty;
- (b) That the defendant is in possession of the premises;
- (c) That the defendant entered upon the premises, holds the premises, and is in default of the payment of rent or that the landlord has reasonable grounds to believe that any person is, or has been, engaged in

the unlawful delivery, production or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant;

(d) That all notices required by law have been served upon the defendant in the required manner or no notice is required because the defendant is a tenant at sufferance pursuant to section [45-1506](#)(11), Idaho Code; and

(e) That the plaintiff is entitled to the possession of the premises.

(2) Upon filing the complaint, a summons must be issued, served and returned as in other actions, provided, however, that at the time of issuance of the summons, the court shall schedule a trial within twelve (12) days from the filing of the complaint, and the service of the summons, complaint and notice of trial setting on the defendant shall be not less than five (5) days before the day of trial appointed by the court.

(3) In an action for possession against a defendant alleged to be occupying property as a result of forcible detainer, a property owner shall state in a verified complaint:

(a) A description of the premises with convenient certainty;

(b) That the defendant is in possession of the premises;

(c) That the defendant entered upon the premises and holds the premises by means of forcible detainer;

(d) That neither the property owner nor any agent thereof has ever entered into a lease or any other similar agreement with the defendant;

(e) That demand has been made to the defendant for surrender of the property, and the defendant has refused to surrender the property to the former occupant or property owner; and

(f) That the plaintiff is entitled to the possession of the premises.

(4) Upon filing the complaint, a summons must be issued, served and returned as in other actions, provided, however, that at the time of issuance of the summons, the court shall schedule a trial within seventy-two (72) hours from the filing of the complaint, excluding weekends and official holidays. The service of the summons, complaint and notice of trial setting on the defendant shall be not less than twenty-four (24) hours before the time of trial appointed by the court.

(5) If any property owner files an action for possession against a defendant alleged to be occupying the property as a result of forcible detainer when a landlord-tenant relationship existed with the defendant and/or in bad faith, said property owner shall be liable to the defendant for treble damages as enumerated in this chapter.

[6-310, added 1974, ch. 308, sec. 3, p. 1803; am. 1976, ch. 71, sec. 1, p. 239; am. 2001, ch. 203, sec. 2, p. 693; am. 2006, ch. 248, sec. 1, p. 757; am. 2017, ch. 276, sec. 2, p. 724; am. 2018, ch. 124, sec. 1, p. 263.]

6-311. CONTINUANCE. In an action exclusively for possession of a tract of land of five (5) acres or less for the nonpayment of rent or if a landlord has alleged that the landlord has reasonable grounds to believe that any person, is or has been, engaged in the unlawful delivery, production, or use of a controlled substance during the term for which the premises are let to the tenant, or if the person is in possession of the property and is a tenant at sufferance pursuant to subsection (11) of section [45-1506](#), Idaho Code, no continuance shall be granted for a longer period than two (2) days unless the defendant applying therefor gives an undertaking to the adverse party with good and sufficient security, to be approved by the court, conditioned for

the payment of the rent that may accrue if judgment is rendered against the defendant.

[6-311, as added by 1974, ch. 308, sec. 4, p. 1803; am. 2001, ch. 203, sec. 3, p. 693; am. 2006, ch. 248, sec. 2, p. 757.]

6-311A. JUDGMENT ON TRIAL BY COURT. In an action exclusively for possession of a tract of land of five (5) acres or less for the nonpayment of rent or on the grounds that the landlord has reasonable grounds to believe that a person is, or has been, engaged in the unlawful delivery, production, or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant, or for forcible detainer, or if the tenant is a tenant at sufferance pursuant to subsection (11) of section 45-1506, Idaho Code, the action shall be tried by the court without a jury. If, after hearing the evidence the court concludes that the complaint is not true, it shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint true or if judgment is rendered by default, it shall render a general judgment against the defendant and in favor of the plaintiff, for restitution of the premises and the costs and disbursements of the action. If the court finds the complaint true in part, it shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable. No provision of this law shall be construed to prevent the bringing of an action for damages.

[6-311A, added 1974, ch. 308, sec. 5, p. 1803; am. 1996, ch. 169, sec. 1, p. 553; am. 2001, ch. 203, sec. 4, p. 693; am. 2006, ch. 248, sec. 3, p. 758; am. 2017, ch. 276, sec. 3, p. 725.]

6-311C. FORM OF EXECUTION. The execution, should judgment of restitution be rendered, may be in the following form:

STATE OF IDAHO)

ss.

County of....)

TO THE SHERIFF OR ANY CONSTABLE OF THE COUNTY:

WHEREAS, a certain action for the possession of the following described premises, to-wit:

.....
.....

lately tried before the above entitled court, wherein.... was plaintiff and.... was defendant, judgment was rendered on the.... day of...., A.D.,....., that the plaintiff.... have restitution of the premises, and also that he recover the costs and disbursements in the sum of \$....;

In the name of the State of Idaho, you are, therefore, hereby commanded to cause the defendant to be forthwith removed from the premises and the plaintiff is to have restitution of the same. In the event the goods and chattels are not promptly removed thereafter by the defendant, the plaintiff is authorized to remove the same pursuant to Section 6-316(2), Idaho Code. Upon returning premises to the plaintiff, the sheriff will make legal service and due return of this writ.

WITNESS My hand and official seal (if issued out of a court of record) this.... day of...., A.D.,.....

.....
Clerk of the District Court

[6-311C, added 1974, ch. 308, sec. 7, p. 1803; am. 2020, ch. 340, sec. 2, p. 996.]

6-311D. ADDITIONAL UNDERTAKING ON APPEAL. If judgment is rendered against the defendant for the restitution of the real property described in the complaint, or any part thereof, no appeal shall be taken by the defendant from the judgment until he gives, in addition to the undertaking now required by law upon appeal, an undertaking to the adverse party, with two (2) sureties, who shall justify in like manner as bail upon arrest, for the payment to the plaintiff, if the judgment is affirmed on appeal, of the rental value of the real property of which restitution is adjudged from the commencement of the action in which the judgment was rendered until final judgment in the action.

[I.C., sec. 6-311D, as added by 1974, ch. 308, sec. 8, p. 1803.]

6-311E. ACTION FOR DAMAGES -- COMPLAINT -- SUMMONS. In an action for damages incurred as a result of failure to pay rent or damages as a result of the unlawful production of a controlled substance on the leased premises during the term for which the premises are let to the tenant, the plaintiff in his complaint must set forth the facts on which he seeks to recover. If the plaintiff combines his action for damages with an action for possession, the complaint shall also describe the premises with reasonable certainty and may set forth therein any circumstances which may have accompanied the alleged nonpayment of rent or the facts which are the basis for the landlord's reasonable grounds to believe that a person is, or has been, engaged in the unlawful production of a controlled substance on the leased premises during the term for which the premises are let to the tenant, and claim damages therefor; provided, however, that the early trial provision of section [6-310](#), Idaho Code, shall not be applicable when an action for damages is combined with an action for possession. In an action for damages, a summons must be issued returnable as in other cases upon filing the complaint.

[6-311E, added 1974, ch. 308, sec. 9, p. 1803; am. 2001, ch. 203, sec. 5, p. 694.]

6-312. JUDGMENT BY DEFAULT. If, at any time appointed, the defendant do [does] not appear and defend, the court must enter his default and render judgment in favor of the plaintiff as prayed for in the complaint.

[(6-312) C.C.P. 1881, sec. 806; R.S., R.C., & C.L., sec. 5102; C.S., sec. 7331; I.C.A., sec. 9-312.]

6-313. TRIAL BY JURY. Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending.

[(6-313) C.C.P. 1881, sec. 808; R.S., R.C., & C.L., sec. 5103; C.S., sec. 7332; I.C.A., sec. 9-313.]

6-314. SUFFICIENCY OF EVIDENCE -- DEFENSES. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible

detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein is not then ended or determined; and such showing is a bar to the proceedings.

[(6-314) C.C.P. 1881, sec. 809; R.S., R.C., & C.L., sec. 5104; C.S., sec. 7333; I.C.A., sec. 9-314.]

6-315. AMENDMENT OF COMPLAINT. When, upon the trial of any proceeding under this chapter, it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs. Such amendment must be without any imposition of terms. No continuance shall be permitted upon account of such amendment unless the defendant, by affidavit filed, shows to the satisfaction of the court good cause therefor.

[(6-315) C.C.P. 1881, sec. 810; R.S., R.C., & C.L., sec. 5105; C.S., sec. 7334; I.C.A., sec. 9-315.]

6-316. JUDGMENT -- RESTITUTION. (1) If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent or based upon a finding that a landlord had reasonable grounds to believe that a person is, or has been, engaged in the unlawful distribution, production, or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant, the judgment shall also declare the forfeiture of such lease or agreement. The jury, or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent or, after default, based upon a finding that a landlord had reasonable grounds to believe that a person is, or has been, engaged in the unlawful distribution, production, or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant, and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for the amount of the damages thus assessed, and of the rent found due. When the proceeding is for an unlawful detainer after default in payment of rent where the tract of land is larger than five (5) acres, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five (5) days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the court for the unlawful detainer, and the costs of the pro-

ceeding, and thereupon the judgment shall be satisfied and the tenant be restored to his estate; but if payment as here provided be not made within the five (5) days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

(2) If, upon the trial, the verdict of the jury or, if the case is tried without a jury, the finding of the court is in favor of the landlord and for the possession of the premises, a residential tenant shall have seventy-two (72) hours to remove his belongings from the premises, and a commercial tenant or a tenant with a tract of land five (5) acres or more shall have seven (7) days to remove his belongings from the premises; provided however, that upon a finding of good cause shown, a court may grant a commercial tenant longer than seven (7) days to remove his belongings. The landlord or his agents may deliver a writ of restitution or provide the sheriff with a copy of the writ of restitution and request that the sheriff deliver the writ. If requested by the landlord or his agents, the sheriff shall deliver a writ of restitution in a form as provided in section [6-311C](#), Idaho Code. After the time required for a tenant to remove his belongings under this subsection and three (3) days after the finding of the court, the sheriff shall restore possession of the premises to the plaintiff by causing immediate removal of the tenant, and the landlord or his agents may, subject to any security interests under [chapter 9, title 28](#), Idaho Code, remove and dispose of all remaining property of the tenant, including any motor vehicle that may be removed pursuant to section [49-1806](#), Idaho Code, that remains on or about the premises without any further compensation or consideration to the tenant. Upon a finding of good cause shown, the court may award to the landlord reasonable costs and expenses not otherwise provided for in this chapter for the removal of property pursuant to this subsection and for restoration of the premises.

[(6-316) C.C.P. 1881, sec. 811; R.S., R.C., & C.L., sec. 5106; C.S., sec. 7335; I.C.A., sec. 9-316; am. 1974, ch. 308, sec. 10, p. 1803; am. 1977, ch. 45, sec. 1, p. 80; am. 2001, ch. 203, sec. 6, p. 694; am. 2020, ch. 340, sec. 3, p. 997.]

6-317. TREBLE DAMAGES. If a landlord or a tenant recovers damages for a forcible or unlawful entry in or upon, or detention of, any building or other tract of land, or for an action brought pursuant to section [6-320](#), Idaho Code, or for an action brought against a tenant or in bad faith pursuant to section [6-310](#) (3), Idaho Code, judgment may be entered for three (3) times the amount at which the actual damages are assessed.

[(6-317) C.C.P. 1881, sec. 475; R.S., R.C., & C.L., sec. 4533; C.S., sec. 6960; I.C.A., sec. 9-317; am. 1977, ch. 45, sec. 2, p. 81; am. 2017, ch. 276, sec. 4, p. 726.]

6-318. PLEADINGS MUST BE VERIFIED. The complaint and answer must be verified.

[(6-318) C.C.P. 1881, sec. 812; R.S., R.C., & C.L., sec. 5107; C.S., sec. 7336; I.C.A., sec. 9-318.]

6-319. APPEAL AS STAY. An appeal taken by the defendant does not stay proceedings upon the judgment unless the court so directs.

[(6-319) C.C.P. 1881, sec. 813; R.S., R.C., & C.L., sec. 5108; C.S., sec. 7337; I.C.A., sec. 9-319.]

6-320. ACTION FOR DAMAGES AND SPECIFIC PERFORMANCE BY TENANT. (a) A tenant may file an action against a landlord for damages and specific performance for:

- (1) Failure to provide reasonable waterproofing and weather protection of the premises;
- (2) Failure to maintain in good working order electrical, plumbing, heating, ventilating, cooling, or sanitary facilities supplied by the landlord;
- (3) Maintaining the premises in a manner hazardous to the health or safety of the tenant;
- (4) Failure to return a security deposit as and when required by law;
- (5) Breach of any term or provision of the lease or rental agreement materially affecting the health and safety of the tenant, whether explicitly or implicitly a part thereof; and
- (6) Failure to install approved smoke detectors in each dwelling unit, to include mobile homes, under the landlord's control. Upon commencement of a rental agreement, the landlord shall verify that smoke detectors have been installed and are in good working order in the dwelling unit. The tenant shall maintain the smoke detectors in good working order during the tenant's rental period. For purposes of this section, an approved smoke detector is a battery-operated device that is capable of detecting visible or invisible particles of combustion and that bears a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly. If the landlord or the landlord's assignee fails to install working smoke detectors, the tenant may send written notice by certified mail, return receipt requested, to the landlord or the landlord's assignee that if working smoke detectors are not installed within seventy-two (72) hours of receipt of the letter, the tenant may install smoke detectors and deduct the cost from the tenant's next month's rent. Smoke detectors purchased by the tenant and deducted from rent become the property of the landlord and shall not be removed from the premises.

Upon filing the complaint, a summons must be issued, served and returned as in other actions, provided, however, that in an action exclusively for specific performance, at the time of issuance of the summons, the court shall schedule a trial within twelve (12) days from the filing of the complaint, and the service of the summons, complaint and trial setting on the defendant shall be not less than five (5) days before the day of trial appointed by the court. If the plaintiff brings an action for damages under this section, or combines his action for damages with an action for specific performance, the early trial provision of this section shall not be applicable, and a summons must be issued returnable as in other cases upon filing the complaint.

(b) In an action under this section, plaintiff, in his complaint, must set forth the facts on which he seeks to recover, describe the premises, and set forth any circumstances which may have accompanied the failure or breach by the landlord.

(c) If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff against the defendant, judgment shall be entered for the amount of the damages

assessed. Judgment may also be entered requiring specific performance for any breach of agreement showing by the evidence, and for costs and disbursements.

(d) Before a tenant shall have standing to file an action under this section, he must give his landlord three (3) days written notice, listing each failure or breach upon which his action will be premised and written demand requiring performance or cure. If, within three (3) days after service of the notice, any listed failure or breach has not been performed or cured by the landlord, the tenant may proceed to commence an action for damages and specific performance.

(e) The provisions of this section shall not apply to tracts of land of five (5) acres or more used for agricultural purposes.

[6-320, added 1977, ch. 45, sec. 4, p. 81; am. 1994, ch. 418, sec. 1, p. 1308.]

6-321. SECURITY DEPOSITS. Amounts deposited by a tenant with a landlord for any purpose other than the payment of rent shall be deemed security deposits. Upon termination of a lease or rental agreement and surrender of the premises by the tenant all amounts held by the landlord as a security deposit shall be refunded to the tenant, except amounts necessary to cover the contingencies specified in the deposit arrangement. The landlord shall not retain any part of a security deposit to cover normal wear and tear. "Normal wear and tear" means that deterioration which occurs based upon the use for which the rental unit is intended and without negligence, carelessness, accident, or misuse or abuse of the premises or contents by the tenant or members of his household, or their invitees or guests.

Refunds shall be made within twenty-one (21) days if no time is fixed by agreement, and in any event, within thirty (30) days after surrender of the premises by the tenant. Any refunds in an amount less than the full amount deposited by the tenant shall be accompanied by a signed statement itemizing the amounts lawfully retained by the landlord, the purpose for the amounts retained, and a detailed list of expenditures made from the deposit.

If security deposits have been made as to a particular rental or lease property, and the property changes ownership during a tenancy, the new owner shall be liable for refund of the deposits.

[6-321, added 1977, ch. 45, sec. 5, p. 83.]

6-322. RULES OF PRACTICE IN GENERAL. The provisions of this code relative to civil actions, appeals and new trials, so far as they are not inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

[6-322, added 1977, ch. 45, sec. 6, p. 83.]

6-323. SERVICE OF NOTICE TO LANDLORD. The notice required by section [6-320](#) (d), Idaho Code, shall be served either:

- (1) By delivering a copy to the landlord or his agent personally; or
- (2) If the landlord or his agent is absent from his usual place of business, by leaving a copy with an employee at the usual place of business of the landlord or his agent; or
- (3) By sending a copy of the notice to the landlord or his agent by United States Postal Service certified mail, return receipt requested.

[6-323, added 1977, ch. 45, sec. 7, p. 84.]

6-324. ATTORNEY FEES. In any action brought under the provisions of this chapter, except in those cases where treble damages are awarded, the prevailing party shall be entitled to an award of attorney fees. For attorney fees to be awarded in cases requiring the three (3) days' notice as set forth in section [6-303](#) 2., Idaho Code, it shall be necessary that the three (3) days' notice advise the tenant that attorney fees shall be awarded to the prevailing party.

[6-324, added 1985, ch. 144, sec. 1, p. 389.]