

Idaho Code § 6-320 (Repairs)

TITLE 6

ACTIONS IN PARTICULAR CASES

CHAPTER 3

FORCIBLE ENTRY AND UNLAWFUL DETAINER

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.