

33-1377. Special detainer actions; service; trial postponement.

- A. Special detainer actions shall be instituted for remedies prescribed in section 33-1368. Except as provided in this section, the procedure and appeal rights prescribed in title 12, chapter 8, article 4 apply to special detainer actions.
- B. The summons shall be issued on the day the complaint is filed and shall command the person against whom the complaint is made to appear and answer the complaint at the time and place named which shall be not more than six nor less than three days from the date of the summons. The tenant is deemed to have received the summons three days after the summons is mailed if personal service is attempted and within one day of issuance of the summons a copy of the summons is conspicuously posted on the main entrance of the tenant's residence and on the same day the summons is sent by certified mail, return receipt requested, to the tenant's last known address. The summons in a special detainer action shall be served at least two days before the return day and the return day made on the day assigned for trial. Service of process in this manner shall be deemed the equivalent of having served the tenant in person for the purposes of awarding a money judgment for all rent, damages, costs and attorney fees due.
- C. For good cause shown supported by an affidavit, the trial may be postponed for not more than three days in a justice court or five days in the superior court.
- D. In addition to determining the right to actual possession, the court may assess damages, attorney fees and costs as prescribed by law.
- E. If a complaint is filed alleging a material and irreparable breach pursuant to section 33-1368, subsection A, the summons shall be issued as provided in subsection B of this section, except that the trial date and return date shall be set no later than the third day following the filing of the complaint. If after the hearing the court finds by preponderance of the evidence that the material and irreparable breach did occur, the court shall order restitution in favor of the plaintiff not less than twelve nor more than twenty-four hours later.
- F. If the defendant is found guilty, the court shall give judgment for the plaintiff for restitution of the premises, for late charges stated in the rental agreement, for costs and, at the plaintiff's option, for all rent found to be due and unpaid through the periodic rental period provided for in the rental agreement as described in section 33-1314, subsection C and shall grant a writ of restitution.
- G. If the defendant is found not guilty, judgment shall be given for the defendant against the plaintiff for costs, and if it appears that the plaintiff has acquired possession of the premises since commencement of the action, a writ of restitution shall issue in favor of the defendant.