

## **Appendix 1 - Versions of Minn. Stat. § 504B.331<sup>1</sup>**

### Table of Contents

2023 Minn Laws ch 52 art 19 s 106 <sup>2</sup> .....	page 2
Minn. Stat. § 504B.331 (2022) <sup>2</sup> .....	page 3
2005 Minn Laws ch 10 art 2 s 4 .....	page 4
1999 Minn Laws ch 199 art 1 s 46 .....	page 5
Minn. Stat. § 566.06 (1998) <sup>2</sup> .....	page 6
1985 Minn Laws ch 214 s 1 .....	pages 7-8
1981 Minn Laws ch 168 s 4 .....	pages 9-10
1976 Minn Laws ch 123 s 1 .....	pages 11-12
1973 Minn Laws ch 611 s 9 .....	pages 13-14
St. 1927 sec 9152 .....	pages 15-16
Gen. St. 1923 sec 9152 .....	page 17
Gen. St. 1913 sec 7661 .....	pages 18-19
1909 Minn Laws ch 496 s 1 .....	page 20
Rev. Laws 1905 sec 4041 .....	page 21
1903 Minn Laws ch 373 .....	pages 22-23
Gen. St. 1894 sec 6111,6113 .....	pages 24-25
1881 Minn Laws ch 50 s 1 .....	pages 26-27
Gen. St. 1878 ch 84 sec 4,6 .....	pages 28-29
Gen. St. 1866 ch 84 sec 4,6 .....	page 30
Pub. St. 1858 ch 77 sec 4,6 .....	page 31
Rev. St. 1851 (Terr.) ch 87 sec 4,6 .....	pages 32-33
M.S.A. §504B.331 (2023) Historical and Statutory Notes .....	pages 34-35

---

<sup>1</sup> The list of versions is available at West’s M.S.A. § 504B.331 Historical and Statutory Notes, copied on pages 34-35. Except for the 1986 item, copies of all versions are in this document. 1986 Minn Laws ch 444 was “An act relating to statutes; adopting as amended a gender neutral revision of Minnesota Statutes; providing for no substantive change” and is not shown.

<sup>2</sup> Session laws plus current and past statutes are available at <https://www.revisor.mn.gov/>

Minnesota Statutes 2022, section 504B.331, is amended to read:

**504B.331 SUMMONS; HOW SERVED.**

(a) The summons and complaint must be served at least seven days before the date of the court appearance specified in section 504B.321, in the manner provided for service of a summons in a civil action in district court. ~~It may be served by any person not named a party to the action.~~

(b) If the defendant cannot be found in the county, the summons and complaint may be served at least seven days before the date of the court appearance by:

(1) leaving a copy at the defendant's last usual place of abode with a person of suitable age and discretion residing there; or

(2) if the defendant had no place of abode, by leaving a copy at the property described in the complaint with a person of suitable age and discretion occupying the premises.

(c) Failure of the sheriff to serve the defendant is prima facie proof that the defendant cannot be found in the county.

(d) Where the defendant cannot be found in the county, service of the summons and complaint may be made upon the defendant by posting the summons in a conspicuous place on the property for not less than one week if:

(1) the property described in the complaint is:

(i) nonresidential and no person actually occupies the property; or

(ii) residential and service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.; and

(2) the plaintiff or the plaintiff's attorney has signed and filed with the court an affidavit stating that:

(i) the defendant cannot be found, or that the plaintiff or the plaintiff's attorney believes that the defendant is not in the state; ~~and~~

(ii) a copy of the summons has been mailed to the defendant at the defendant's last known address if any is known to the plaintiff; or

(iii) the plaintiff or plaintiff's attorney has communicated to the defendant that an eviction hearing has been scheduled, including the date, time, and place of the hearing specified in the summons, by at least one form of written communication the plaintiff regularly uses to communicate with the defendant that have a date and time stamp.

(e) If the defendant or the defendant's attorney does not appear in court on the date of the appearance, the trial shall proceed.

**504B.331 SUMMONS; HOW SERVED.**

(a) The summons must be served at least seven days before the date of the court appearance specified in section 504B.321, in the manner provided for service of a summons in a civil action in district court. It may be served by any person not named a party to the action.

(b) If the defendant cannot be found in the county, the summons may be served at least seven days before the date of the court appearance by:

(1) leaving a copy at the defendant's last usual place of abode with a person of suitable age and discretion residing there; or

(2) if the defendant had no place of abode, by leaving a copy at the property described in the complaint with a person of suitable age and discretion occupying the premises.

(c) Failure of the sheriff to serve the defendant is prima facie proof that the defendant cannot be found in the county.

(d) Where the defendant cannot be found in the county, service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the property for not less than one week if:

(1) the property described in the complaint is:

(i) nonresidential and no person actually occupies the property; or

(ii) residential and service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.; and

(2) the plaintiff or the plaintiff's attorney has signed and filed with the court an affidavit stating that:

(i) the defendant cannot be found, or that the plaintiff or the plaintiff's attorney believes that the defendant is not in the state; and

(ii) a copy of the summons has been mailed to the defendant at the defendant's last known address if any is known to the plaintiff.

(e) If the defendant or the defendant's attorney does not appear in court on the date of the appearance, the trial shall proceed.

**History:** 1999 c 199 art 1 s 46; 2005 c 10 art 2 s 4

(h) (f) "Law enforcement agency" means:

(1) a unit of state or local government that is authorized by law to grant full powers of arrest and to charge a person with the duties of preventing and detecting crime and enforcing the general criminal laws of the state; and

(2) subject to the limitations in section 626.93, a law enforcement agency of a federally recognized tribe, as defined in United States Code, title 25, section 450b(e).

(i) (g) "Professional peace officer education" means a postsecondary degree program, or a nondegree program for persons who already have a college degree, that is offered by a college or university in Minnesota, designed for persons seeking licensure as a peace officer, and approved by the board.

#### Sec. 4. REVISOR'S INSTRUCTION.

Subdivision 1. LAW ENFORCEMENT AGENCY DEFINITION. The revisor of statutes shall change the reference "626.84, subdivision 1, paragraph (h)" to "626.84, subdivision 1, paragraph (f)" in Minnesota Statutes, sections 45.0135, subdivision 2a; 364.09, paragraph (a); 473.407, subdivision 1; 241.025, subdivision 1; 626.8453, subdivision 1, paragraph (b); 626.90, subdivision 2, paragraph (a); 626.91, subdivision 1, paragraph (a); 626.92, subdivision 2; and 626.93, subdivision 2, clause (1), and change the reference from "626.84, subdivision 1, paragraph (f)" or "clause (f)" to "626.84, subdivision 1, paragraph (d)" in Minnesota Statutes, sections 473.407, subdivision 4; 241.025, subdivision 4; and 629.34, subdivision 1.

Subd. 2. CONSTABLES AND MARSHALS. In the following sections, the revisor of statutes shall delete references to the terms "constable," "deputy constable," "marshal," "city marshals," and "statutory city marshal" and make changes necessary to correct the punctuation, grammar, or structure of the remaining text and preserve its meaning: 38.01; 97A.205; 103B.645; 103B.683; 115.32, subdivision 3; 136F.53, subdivision 5; 169.965, subdivisions 4 and 5; 169.966, subdivisions 4 and 5; 169A.03, subdivision 18; 176.011, subdivision 9; 192.68, subdivision 1; 192.85; 260C.148, subdivision 3; 299C.03; 299C.06; 299D.03, subdivision 1; 325E.21, subdivision 1; 326.3384, subdivision 1; 327.76, subdivision 3; 329.14; 330.06; 332.37; 345.04; 345.05; 346.14; 346.17; 346.18; 347.14, subdivisions 1 and 2; 349.33; 359.11; 382.27; 395.23; 398.13; 412.861, subdivision 1; 458D.18, subdivision 4; 473.608, subdivision 17; 504B.331; 504B.361, subdivision 1; 504B.375, subdivision 1; 514.22; 514.58; 518B.01, subdivisions 6 and 9; 541.06; 561.07; 617.27; 624.24; 624.62; 626.848; 626.862; 626.863; 626.88; and 631.04.

#### Sec. 5. REPEALER.

Minnesota Statutes 2004, sections 306.13; 315.43; 317A.909, subdivision 4; 357.12; 367.40, subdivisions 3 and 4; 367.401, subdivision 4; 367.42; and 398.35, subdivision 2, are repealed.

New language is indicated by underline, deletions by ~~strikeout~~.

(a) The summons must be served at least seven days before the date of the court appearance specified in section 44, in the manner provided for service of a summons in a civil action in district court. It may be served by any person not named a party to the action

(b) If the defendant cannot be found in the county, the summons may be served at least seven days before the date of the court appearance by:

(1) leaving a copy at the defendant's last usual place of abode with a person of suitable age and discretion residing there; or

(2) if the defendant had no place of abode, by leaving a copy at the property described in the complaint with a person of suitable age and discretion occupying the premises.

(c) Failure of the sheriff or constable to serve the defendant is prima facie proof that the defendant cannot be found in the county.

(d) Where the defendant cannot be found in the county, service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the property for not less than one week if:

(1) the property described in the complaint is:

(i) nonresidential and no person actually occupies the property; or

(ii) residential and service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.; and

(2) the plaintiff or the plaintiff's attorney has signed and filed with the court an affidavit stating that:

(i) the defendant cannot be found, or that the plaintiff or the plaintiff's attorney believes that the defendant is not in the state; and

(ii) a copy of the summons has been mailed to the defendant at the defendant's last known address if any is known to the plaintiff.

(e) If the defendant or the defendant's attorney does not appear in court on the date of the appearance, the trial shall proceed.

Minn. Stat. § 566.06 (1998)

**566.06 Summons; how served.**

The summons shall be served at least seven days before the return day in the manner provided for service of a summons in a civil action in the district court. If the person cannot be found in the county, the summons may be served at least seven days before its return day by leaving a copy at the person's last usual place of abode with a family member or a person of suitable age and discretion residing there, or if the person had no place of abode, by leaving a copy upon the premises described in the complaint with a person of suitable age and discretion occupying the same or any part thereof. The summons may be served by any person not named a party to the action. If the defendant cannot be found in the county, of which the return of the sheriff or constable shall be prima facie proof, and, in the case of a nonresidential premises, no person actually occupies the premises described in the complaint, or, in case the premises described in the complaint is residential, service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 and 10:00 p.m., upon the filing of an affidavit of the plaintiff or the plaintiff's attorney stating that (1) the defendant cannot be found or on belief that the defendant is not in this state, and (2) a copy of the summons has been mailed to the defendant at the defendant's last known address if any is known to the plaintiff, service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the premises for not less than one week. If the defendant or the defendant's attorney does not appear in court upon the return day in the action, the trial thereof shall proceed.

If otherwise permitted under this section, the commissioner may authorize limited shared service agreements with for-profit organizations concerning laundry services only.

The duration of limited agreements may not exceed three calendar years and the total dollar amount attributable to a limited agreement may not exceed \$100,000. Consultation with the legislative advisory committee is not required for agreements made pursuant to this subdivision. The charges for services must be on an actual cost basis and receipts are dedicated for the operations of the state hospitals or state nursing homes that provide the service, and are appropriated for that purpose.

Approved May 23, 1985

---

#### CHAPTER 214 — S.F.No. 1434

*An act relating to real estate; providing for service in forcible entry and unlawful detainer actions; amending Minnesota Statutes 1984, section 566.06.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1984, section 566.06, is amended to read:  
566.06 **SUMMONS; HOW SERVED.**

The summons shall be served at least seven days before the return day in the manner provided for service of a summons in a civil action in the district court. If the person cannot be found in the county, the summons may be served on him at least seven days before its return day by leaving a copy at his last usual place of abode with a member of his family, or a person of suitable age and discretion residing there, or if he had no place of abode, by leaving a copy upon the premises described in the complaint with a person of suitable age and discretion occupying the same or any part thereof. The summons may be served by any person not named a party to the action. If the defendant cannot be found in the county, of which the return of the sheriff or constable, shall be prima facie proof, and no person actually occupies the premises described in the complaint and, in the case of a nonresidential premises, no person actually occupies the premises described in the complaint, or, in case the premises described in the complaint is residential, service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 and 10:00 p.m., upon the filing of an affidavit of the plaintiff or his attorney stating that (1) the defendant cannot be found or on belief that the defendant is not in this state, and (2) a copy of the summons has been mailed to the defendant at his last known address if any is known to the plaintiff, service of the summons

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

may be made upon the defendant by posting the summons in a conspicuous place on the premises for not less than one week. If the defendant or his attorney does not appear in court upon the return day in the action, the trial thereof shall proceed.

Approved May 23, 1985

---

**CHAPTER 215 — S.F.No. 675**

*An act relating to highways; allowing road authorities to designate minimum-maintenance roads; exempting road authorities from liability for damages arising from travel on minimum-maintenance roads; amending Minnesota Statutes 1984, sections 160.02, subdivision 7; and 169.06, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 160.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1984, section 160.02, subdivision 7, is amended to read:

Subd. 7. **ROAD OR HIGHWAY.** "Road" or "highway" includes, unless otherwise specified, the several kinds of highways as defined in this section, including roads designated as minimum-maintenance roads, and also cartways, together with all bridges or other structures thereon which form a part of the same.

Sec. 2. Minnesota Statutes 1984, section 169.06, subdivision 1, is amended to read:

Subdivision 1. **UNIFORM SYSTEM.** The commissioner shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this chapter for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system then current as approved by the American Association of State Highway Officials. The manual and specifications must include the design and wording of minimum-maintenance road signs. The adoption of the manual and specifications by the commissioner as herein provided is specifically exempted from the provisions and requirements of sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57 to 14.62 and acts amendatory thereto.

Sec. 3. **[160.095] DESIGNATION OF MINIMUM-MAINTENANCE ROADS.**

Subdivision 1. **RESOLUTION.** A road authority, other than the commissioner, may by resolution designate a road under its jurisdiction as a minimum-maintenance road if it determines that the road or road segment is used

Changes or additions are indicated by underline, deletions by ~~strikeout~~.



or mailed by postage prepaid, first class United States mail, to the address of the other party. The lessor may comply with the notice requirement of this subdivision by delivering or mailing the notice to the premises formerly occupied by the lessee. The termination of a lease under this section shall not relieve the lessee's estate from liability either for the payment of rent or other sums owed prior to or during the notice period, or for the payment of amounts necessary to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

**Subd. 3. WAIVER PROHIBITED.** Any attempted waiver by a lessor and lessee or lessee's personal representative, by contract or otherwise, of the right of termination provided by this section, and any lease provision or agreement requiring a longer notice period than that provided by this section, shall be void and unenforceable; provided, however, that the lessor and lessee or lessee's personal representative may agree to otherwise modify the specific provisions of this section.

**Subd. 4. APPLICABILITY.** The provisions of this section shall apply to leases entered into or renewed after the effective date of this section.

Sec. 3. Minnesota Statutes 1980, Section 566.05, is amended to read:

**566.05 COMPLAINT AND SUMMONS.**

The person complaining shall file a complaint with a justice of the peace the court, describing the premises of which possession is claimed, stating the facts which authorize the recovery, and praying for restitution thereof. The justice court shall thereupon issue a summons, commanding the person against whom such the complaint is made to appear before him the court on a day and at a place stated in such the summons named, which. The appearance shall not be not less than three seven, nor more than ten 14, days from the day of issuing the same summons. A copy of the complaint shall be attached to the summons, which shall state that it is so the copy is attached, and that the original has been filed.

Sec. 4. Minnesota Statutes 1980, Section 566.06, is amended to read:

**566.06 SUMMONS; HOW SERVED.**

The summons shall be served at least three seven days before the return day thereof by delivering a copy to the person against whom it is issued or if such person be a corporation, a minor under 14 years of age or a person under guardianship, by delivering a copy as provided in the case of a in the manner provided for service of a summons in a civil action in the district court; but, in case such If the person cannot be found in the county, the summons may be served on him at least six seven days before the its return day thereof, by leaving a copy thereof at his last usual place of abode with a member of his family, or a person of suitable age and discretion residing at such place there.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

or if he had no place of abode, by leaving a copy thereof upon the premises described in the complaint with a person of suitable age and discretion occupying the same or any part thereof. The summons may be served by the ~~sheriff or any constable of the county, by an agent or attorney of any named party to the action, or by any other person not named a party to the action.~~ In case If the defendant cannot be found in the county, of which the return of the sheriff or constable, shall be prima facie proof, and further that there is no person actually ~~occupying~~ occupies the premises described in the complaint, then upon the filing of an affidavit by of the plaintiff, or his attorney, in the court in which the action is brought stating that he believes (1) the defendant is not in this state, or cannot be found therein or on belief that the defendant is not in this state, and either that he has mailed (2) a copy of the summons has been mailed to the defendant at his last known address, or that such address is not if any is known to him the plaintiff, service of the summons may be made upon such the defendant by posting the summons in a conspicuous place on the premises for not less than one week and. If upon the return day the defendant, or his attorney, does not appear in court upon the return day in the action then, the trial thereof shall proceed.

Sec. 5. Minnesota Statutes 1980, Section 566.09, is amended to read:  
566.09 JUDGMENT; FINE; EXECUTION.

If, upon the trial, the justice court or jury find finds for the plaintiff, the justice court shall immediately thereupon enter judgment that the plaintiff have restitution of the premises, and tax the costs for him. The justice court shall issue execution in favor of the plaintiff for such the costs, and also immediately issue a writ of restitution. No stay of the writ of restitution may be granted except upon a showing by the defendant that the restitution would work a substantial hardship upon the defendant. Upon a proper showing by the defendant of substantial hardship, the justice may stay the writ of restitution for a reasonable period not to exceed seven days, except that no stay of the writ of restitution shall extend later than three days prior to the date the rent is next due Upon a showing by the defendant that immediate restitution of the premises would work a substantial hardship upon him or his family, the court shall stay the writ of restitution for a reasonable period, not to exceed seven days. If the justice court or jury shall find finds for the defendant, he the court shall enter judgment for the defendant, tax the costs against the plaintiff, and issue execution therefor.

Sec. 6. INSTRUCTIONS TO REVISOR.

The revisor of statutes shall change the term "justice" or "justice of the peace" to "court" or another appropriate term wherever it appears in chapter 566.

Sec. 7. EFFECTIVE DATE.

This act shall be effective the day following its final enactment.

Approved May 11, 1981

Changes or additions are indicated by underline, deletions by strikeout.

proval by a majority of the council of the city of Eveleth and upon compliance with Minnesota Statutes, Section 645.021.

Approved April 2, 1976.

---

**CHAPTER 123—H.F.No.718**

*An act relating to forcible entry and unlawful detainer; providing for stay of writ of restitution; amending Minnesota Statutes 1974, Sections 566.06; and 566.09.*

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:**

Section 1. Minnesota Statutes 1974, Section 566.06, is amended to read:

**566.06 FORCIBLE ENTRY AND UNLAWFUL DETAINER; STAY OF WRIT OF RESTITUTION; SUMMONS; HOW SERVED.** The summons shall be served at least three days before the return day thereof by delivering a copy to the person against whom it is issued or if such person be a corporation, a minor under 14 years of age or a person under guardianship, by delivering a copy as provided in the case of a service of summons in a civil action in the district court; but in case such person cannot be found in the county, the summons may be served on him at least six days before the return day thereof, by leaving a copy thereof at his last usual place of abode with a member of his family, or a person of suitable age and discretion residing at such place, or if he had no place of abode, by leaving a copy thereof upon the premises described in the complaint with a person of suitable age and discretion occupying the same or any part thereof. The summons may be served by the sheriff or any constable of the county, by an agent or attorney of any named party to the action, or by any other person not a named party to the action. In case the defendant ~~has no usual place of abode and~~ cannot be found in the county, of which the return of the sheriff or constable, shall be prima facie proof, and further that there is no person actually occupying the premises described in the complaint, then upon the filing of an affidavit by the plaintiff, or his attorney, in the court in which the action is brought stating that ~~no person is actually occupying the premises and that~~ he believes the defendant is not in this state, or cannot be found therein, and either that he has mailed a copy of the summons to the defendant at his last known address, or that such address is not known to him, service of the summons may be made upon such defendant by posting the summons in a conspicuous place on the premises for not less than one week and by one week's published notice thereof in some newspaper printed and published in the county wherein the action is brought, or, if there be no newspaper therein, then in some newspaper printed and published at the capitol of the state and if upon the return day the defendant, or his attorney, does not appear in court in the action then the trial thereof shall be

**Changes or additions indicated by underline deletions by strikethrough**

continued for one week to enable the defendant to make his appearance and defend therein—proceed .

Sec. 2. Minnesota Statutes 1974, Section 566.09, is amended to read:

**566.09 JUDGMENT; FINE; EXECUTION.** If, upon the trial, the justice or jury find for the plaintiff, the justice shall immediately thereupon enter judgment that the plaintiff have restitution of the premises, and tax the costs for him. The justice shall issue execution in favor of the plaintiff for such costs, and also immediately issue a writ of restitution. No stay of the writ of restitution may be granted except upon a showing by the defendant that the restitution would work a substantial hardship upon the defendant. Upon a proper showing by the defendant of substantial hardship, the justice may stay the writ of restitution for a reasonable period not to exceed seven days, except that no stay of the writ of restitution shall extend later than three days prior to the date the rent is next due. If the justice or jury shall find for the defendant, he shall enter judgment for the defendant, tax the costs against the plaintiff, and issue execution therefor.

Approved April 2, 1976.

---

## CHAPTER 124—H.F.No.910

[Coded in Part]

*An act relating to crimes; specifying the acts constituting arson and the possession of certain explosives; correcting an error in the definition of certain criminal sexual conduct; providing penalties; amending Minnesota Statutes 1974, Chapters 299F, by adding sections; and 609, by adding sections; Minnesota Statutes, 1975 Supplement, Section 609.345; repealing Minnesota Statutes 1974, Sections 299F.81; 609.555; 609.56; 609.565; 609.57; 609.575; and 609.61.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1974, Chapter 299F, is amended by adding a section to read:

**[299F.81] CRIMES AND CRIMINALS; ARSON; POSSESSION OF EXPLOSIVES OR INCENDIARY DEVICES.** Whoever possesses, manufactures, or transports any explosive compound, timing or detonating device for use with any explosive compound or incendiary device and either intends to use the explosive or device to commit a crime or knows that another intends to use the explosive or device to commit a crime, may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$5,000 or both.

Sec. 2. Minnesota Statutes 1974, Chapter 299F, is amended by **Changes or additions indicated by underline deletions by strikethrough**

Sec. 6. Minnesota Statutes 1971, Section 566.01, is amended to read:

**566.01 FORCIBLE ENTRY AND UNLAWFUL DETAINER.**

(1) No person shall make entry into lands or tenements except in cases where his entry is allowed by law, and in such cases he shall not enter by force, but only in a peaceable manner.

~~(2) When any person has made unlawful or forcible entry into lands or tenements, and detains the same, he is guilty of a misdemeanor.~~

~~(3) If he has been removed therefrom in proceedings under Minnesota Statutes, Chapter 566, or by other legal proceedings, and thereafter, contrary thereto, re-enters, he may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$1,000, or both.~~

Sec. 7. Minnesota Statutes 1971, Section 566.02, is amended to read:

**566.02 UNLAWFUL DETENTION OF LANDS OR TENEMENTS SUBJECT TO FINE.** When any person has made unlawful or forcible entry into lands or tenements, and detains the same, or, having peaceably entered, unlawfully detains the same, ~~he shall be fined, and~~ the person entitled to the premises may recover possession thereof in the manner hereinafter provided.

Sec. 8. Minnesota Statutes 1971, Section 566.05, is amended to read:

**566.05 COMPLAINT AND SUMMONS.** The person complaining shall file a complaint with a justice of the peace, describing the premises of which possession is claimed, stating the facts which authorize the recovery, and praying for restitution thereof. The justice shall thereupon issue a summons, ~~directed to the sheriff or any constable of the county, commanding him to summon~~ the person against whom such complaint is made to appear before him on a day and at a place in such summons named, which shall not be less than three, nor more than ten, days from the day of issuing the same. A copy of the complaint shall be attached to the summons, which shall state that it is so attached, and that the original has been filed.

Sec. 9. Minnesota Statutes 1971, Section 566.06, is amended to read:

**566.06 SUMMONS; HOW SERVED.** The summons shall be served at least three days before the return day thereof by delivering a copy to the person against whom it is issued or if such person be a corporation, a minor under 14 years of age or a person

Changes or additions indicated by underline, deletions by ~~strikeout~~.

under guardianship, by delivering a copy as provided in the case of a service of summons in a civil action in the district court; but in case such person cannot be found in the county, the summons may be served on him at least six days before the return day thereof, by leaving a copy thereof at his last usual place of abode with a member of his family, or a person of suitable age and discretion residing at such place, or if he had no place of abode, by leaving a copy thereof upon the premises described in the complaint with a person of suitable age and discretion occupying the same or any part thereof. The summons may be served by the sheriff or any constable of the county or by any other person not a party to the action. In case the defendant has no usual place of abode and cannot be found in the county, of which the return of the ~~officer~~ sheriff or constable, shall be prima facie proof, and further that there is no person actually occupying the premises described in the complaint, then upon the filing of an affidavit by the plaintiff, or his attorney, in the court in which the action is brought stating that no person is actually occupying the premises and that he believes the defendant is not in this state, or cannot be found therein, and either that he has mailed a copy of the summons to the defendant at his last known address, or that such address is not known to him, service of the summons may be made upon such defendant by posting the summons in a conspicuous place on the premises one week and by one week's published notice thereof in some newspaper printed and published in the county wherein the action is brought, or, if there be no newspaper therein, then in some newspaper printed and published at the capitol of the state and if upon the return day the defendant, or his attorney, does not appear in court in the action then the trial thereof shall be continued for one week to enable the defendant to make his appearance and defend therein.

Sec. 10. Minnesota Statutes 1971, Section 566.09, is amended to read:

**566.09 JUDGMENT; FINE; EXECUTION.** If, upon the trial, the justice or jury find ~~the defendant or any of several defendants guilty of the allegations in the complaint for the plaintiff,~~ the justice shall thereupon enter judgment that the plaintiff have restitution of the premises, and tax the costs for him, ~~and, when the action is brought under section 566.02, shall impose such a fine against the defendant not exceeding \$100 as he may deem just.~~ The justice shall issue execution in favor of the plaintiff for such costs, and also issue a writ of restitution. If the justice or jury shall find ~~that for the defendant is not guilty as aforesaid,~~ he shall enter judgment for the defendant, tax the costs against the plaintiff, and issue execution therefor.

Sec. 11. Minnesota Statutes 1971, Section 566.15, is amended to read:

Changes or additions indicated by underline, deletions by ~~strikeout~~.

Forcible entry statute inapplicable (127-93, 148+983).

In an action to foreclose a mortgage, where the mortgagor had died leaving a widow and children as his heirs at law, a receiver was appointed to take possession of the land mortgaged. The widow, as administratrix of her husband's estate and in her own right, was a party to the action, but the children were not. Prior to the appointment of the receiver, one of the children took possession of the land. Held, that the receiver could not recover possession by resorting to unlawful detainer proceedings. 157-485, 196+661.

**9149. Recovery of possession**—When any person holds over lands or tenements after a sale thereof on an execution or judgment, or on foreclosure of a mortgage and expiration of the time for redemption, or after termination of contract to convey the same, or after termination of the time for which they are demised or let to him or to the persons under whom he holds possession, or contrary to the conditions or covenants of the lease or agreement under which he holds, or after any rent becomes due according to the terms of such lease or agreement, or when any tenant at will holds over after the determination of any such estate by notice to quit, in all such cases the person entitled to the premises may recover possession thereof in the manner hereinafter provided. (R. L. '05 § 4038, G. S. '13 § 7658, amended '17 c. 227 § 2)

157-485, 196+661, note under § 9148; 166-33, 206+944.

Complaint and objections thereto. 160-428, 200+470.

1. Election of remedies—53-483, 487, 55+630.

2. Nature and object of action—8-524, 467; 14-170, 131; 25-183; 28-267, 273, 9+772; 28-388, 389, 10+417; 53-483, 486, 55+630; 62-370, 64+911; 67-449, 451, 70+567; 81-445, 450, 84+454.

3. Jurisdiction—Original jurisdiction limited to justice and municipal courts (53-483, 55+630). Municipal court of Minneapolis has no jurisdiction in proceedings based on breach of contract of lease of lands partly within and partly without Hennepin county (99-426, 109+827).

The Municipal Court Act of the city of Minneapolis, c. 34, Special Laws 1889, as amended by chapter 407, Laws 1917, gives jurisdiction of action in unlawful detainer, whether the title to real estate is involved or not. 161-157, 201+299.

The lessee of a homestead, the lease being void because the wife of the lessor failed to sign it, becomes a tenant at will when he enters into possession under the lease, and is bound to pay rent in accordance with the terms thereof. If he fails to do so, he may be evicted under the unlawful detainer statute. 166-190, 207+498.

4. When action will lie—Conventional relation of landlord and tenant essential (28-267, 273, 9+772; 30-393, 15+678; 47-269, 50+227; 81-445, 451, 84+454. See 8-524, 467; 73-108, 75+1039). Unnecessary that detainer be forcible (36-80, 30+446). Will lie against tenant withholding possession after expiration of his term (28-267, 273, 9+772; 30-393, 15+678; 31-430, 18+151; 47-1, 49+327; 53-456, 55+603; 70-102, 72+841); contrary to the conditions or covenants of the lease or agreement (28-267, 273, 9+772; 29-432, 13+676; 32-291, 20+232; 36-80, 30+446; 36-102, 30+400; 51-358, 53+805; 67-449, 451, 70+567; 89-444, 95+314); after rent becomes due according to the terms of the lease or agreement whether the lease contains a re-entry clause or not (21-398; 22-37; 26-99, 1+820; 41-542, 546, 43+479; 45-26, 47+397; 61-448, 63+1099; 72-100, 75+114; 74-279, 77+3).

5. Who may maintain—Grantee of lessor (81-445, 84+454). Subsequent lessee from lessor (30-393, 15+678).

6. Parties defendant—Subtenants (31-430, 18+151; 34-470, 26+602). Servants, agents or members of family of tenant (34-470, 26+602).

7. Demand—Notice to quit—If the action is based on the ground of non-payment of rent no notice to quit or demand of rent is necessary before suit whether the tenancy is for a fixed term or at will (21-398; 22-37; 36-173, 30+457; 72-100, 75+114; 74-279, 77+3). If the action is based on the ground of expiration of a fixed term no notice to quit is necessary before suit (30-122, 14+510); otherwise if tenancy is at will.

8. Actions against mortgagors holding over—22-349, 30-27, 14+56; 37-76, 33+440; 47-269, 50+227; 60-6, 61+818; 66-262, 68+1087; 67-197, 69+887; 73-58, 61, 75+756.

9. Actions against debtor holding over after execution sale—4-298, 215; 25-183; 35-367, 368, 29+3. See 37-76, 33+440.

10. Transfer to district court—An action for forcible entry and unlawful detainer, transferred to district court after it appears that title to real estate is involved, is in effect an action in ejectment (105-348, 117+512).

127-93, 148+983.

A month's notice to quit entitles lessor to possession (128-534, 150+1102; 138-179, 164+807). Unlawful de-

tainer judgment not a bar to action on title (162-330, 188+732; 154-228, 191+824; 194+722).

**9150. Limitation**—No restitution shall be made under this chapter of any lands or tenements of which the party complained of, or his ancestors, or those under whom he holds the premises, have been in quiet possession for three years next before the filing of the complaint, after the determination of the leasehold estate that he may have had therein. (4039) [7659]

45-26, 47+397; 81-445, 453, 84+454.

**9151. Complaint and summons**—The person complaining shall file a complaint with a justice of the peace, describing the premises of which possession is claimed, stating the facts which authorize the recovery, and praying for restitution thereof. The justice shall thereupon issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person against whom such complaint is made to appear before him on a day and at a place in such summons named, which shall not be less than three nor more than ten days from the day of issuing the same. A copy of the complaint shall be attached to the summons, which shall state that it is so attached, and that the original has been filed. (4040) [7660]

Requisites of complaint under § 9148 (19-174, 137. See 37-76, 33+440). Requisites of complaint under § 9149 (1-88, 67; 1-179, 153; 9-34, 23; 21-398, 30-122, 14+510; 43-458, 45+864). Pleadings to be construed as in ordinary civil actions (53-456, 459, 55+603). Cited (28-461, 462, 11+63). Summons in municipal court of St. Paul, when returnable (101-253, 112+220).

**9152. Summons—How served**—The summons shall be served at least three days before the return day thereof by delivering a copy to the person against whom it is issued or if such person be a corporation, a minor under fourteen years of age or a person under guardianship, by delivering a copy as provided in the case of a service of summons in a civil action in the district court; but in case such person cannot be found in the county, the summons may be served on him at least six days before the return day thereof, by leaving a copy thereof at his last usual place of abode with a member of his family, or a person of suitable age and discretion residing at such place, or if he had no place of abode, by leaving a copy thereof upon the premises described in the complaint with a person of suitable age and discretion occupying the same or any part thereof: Provided, that in case the defendant has no usual place of abode and cannot be found in the county, of which the return of the officer, shall be prima facie proof, and further that there is no person actually occupying the premises described in the complaint, then upon the filing of an affidavit by the plaintiff or his attorney in the court in which said action is brought stating that no person is actually occupying said premises and that he believes the defendant is not in said state, or cannot be found therein, and either that he has mailed a copy of the summons to the defendant at his last known address, or that such address is not known to him, service of the summons may be made upon such defendant by posting the summons in a conspicuous place on said premises one week and by one week's published notice thereof in some newspaper printed and published in the county wherein said action is brought, or, if there be no newspaper therein, then in some newspaper printed and published at the capitol of the state and if upon the return day the said defendant or his attorney does not appear in said court in said action then the trial thereof shall be continued for one week to enable the defendant to

make his appearance and defend therein. (R. L. § 4041, amended '09 c. 496 § 1) [7661]  
89-444, 95+314. Cited (101-253, 112+220).

**9153. Answer—Trial—**After the return of the summons, at the time and place appointed therein, if the defendant appear, he may answer the complaint, and all matters in excuse, justification, or avoidance of the allegations thereof shall be set up in the answer; and thereupon the justice shall hear and determine the action, unless he shall adjourn the trial as provided in § 9154, but either party may demand a trial by jury. The proceedings in such action shall be the same as in other civil actions in a justice's court, except as in this chapter otherwise provided. (4042) [7662]

Defendant must answer, if at all, on the return day or at such other time as the justice may designate (42-35, 43+687). Oral plea of not guilty (89-444, 95+314). Matters requiring affirmative equitable relief cannot be set up by answer (28-267, 273, 94772; 31-392, 18+101; 53-456, 55+603; 68-328, 331, 71+395, 72+71; 73-108, 113, 75+1039). Matters which control the legal effect of the lease may be set up (28-267, 273, 94772). Matters in "excuse, justification, or avoidance" are such as constitute "new matter" under general practice act (101-155, 111+962). Held not a defence (36-80, 30+446; 53-204, 209, 54+112; 61-448, 63-1099; 67-449, 70+567). Defendant cannot set up a counterclaim (67-449, 70+567). See 14-469, 351). If the complaint is insufficient defendant may move to dismiss (28-388, 390, 10+417). Judgment on the pleadings (53-456, 55+603; 61-448, 63+1099). Burden of proof (8-524, 467; 89-444, 446, 95+314). Waiver of jury trial (21-393). Justice not required to wait an hour for appearance of defendant (22-37). Section 9153 deals only with judgment upon a trial on merits, and is not inconsistent with entry of judgment when there is no such trial (102-237, 113+383).

165-262, 206+168.  
Practice in municipal court. 154-225, 194+722.  
A justice of the peace cannot entertain motions for a new trial, nor should a judge of the municipal court, in actions of this nature, where he must follow the practice prescribed for a justice of the peace. 154-225.  
The answer set forth matters strictly legal, and the court had jurisdiction to entertain the same. 157-161, 195+898.

The municipal court of Minneapolis in forcible entries and unlawful detainers cannot entertain (1) a motion for a new trial; (2) a motion for judgment notwithstanding the verdict. It can, however, (a) dismiss an action; (b) discharge a jury; (c) direct a verdict; (d) entertain and determine a motion for judgment on the pleadings. 158-217, 197+209.

**9154. Adjournment—Security for rent—**The justice, in his discretion, may adjourn the trial, but not beyond six days after the return day, unless by consent of parties; but in all cases mentioned in § 9149, except in an action upon a written lease signed by both parties thereto, if the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial for want of a material witness, naming him, and that he has made due exertion to obtain said witness, and believes that, if such adjournment be allowed, he will be able to procure the attendance of such witness at the trial, or his deposition, and shall give bond conditioned to pay to the plaintiff all rent which may accrue during the pendency of the action, and all costs and damages consequent upon such adjournment, the justice shall adjourn the trial for such time as may appear necessary, not exceeding three months. (4043) [7663]  
41-542, 547, 43+479; 72-100, 75+114.

**9155. Judgment—Fine—Execution—**If, upon the trial, the justice or jury find the defendant or any of several defendants guilty of the allegations in the complaint, the justice shall thereupon enter judgment that the plaintiff have restitution of the premises, and tax the costs for him, and, when the action is brought under § 9148, shall impose such a fine against the defendant, not exceeding one hundred dollars, as he may deem just. The justice shall issue execution in favor of the plaintiff for such costs, and also issue a writ

of restitution. If the justice or jury shall find that the defendant is not guilty as aforesaid, he shall enter judgment for the defendant, tax the costs against the plaintiff, and issue execution therefor. (4044) [7664]

Justice has reasonable time to enter judgment (21-398). Judgment on default without proof unauthorized (28-461, 11+63). Findings (26-99, 1+820; 28-461, 11+63). Judgment of dismissal on appeal (40-211, 41+972). Judgment as a bar (68-328, 330, 71+395, 72+71). Cited 89-444, 446, 95+314. Form of judgment held sufficient (63-456, 55+603). Damages for withholding or for rent cannot be recovered. The only judgment that can be rendered is for restitution and costs (53-483, 487, 55+630).

See 102-237, 113+383.  
Motion for new trial cannot be entertained by Justice or Municipal Judge (154-228, 191+824, 194+722).

Effect of judgment in such actions, following William Welsman Holding Co. v. Miller, 152 Minn. 330, 188 N. W. 722, 157-161, 195+898.

In an action in unlawful detainer, where a verdict was returned in favor of the party in possession, and the plaintiff on the same day executed a conveyance of the premises to a third party, who brought another action in unlawful detainer involving the same state of facts, held, that the former was res judicata. 161-157, 201+299.

**9156. Disagreement—**If the jury cannot agree upon a verdict, the justice may discharge them, and issue a venire, returnable forthwith, or at some other time agreed upon by the parties or fixed by the justice, for the purpose of impaneling a new jury. (4045) [7665]  
53-232, 233, 54-1118.

**9157. Writ of restitution—Effect of appeal—**If the party against whom judgment for restitution is rendered or his attorney state to the justice that he intends to take an appeal, a writ of restitution shall not issue for twenty-four hours after judgment: Provided, that in an action on a lease, against a tenant holding over after the expiration of the term thereof, or a termination thereof by a notice to quit, such writ may issue forthwith notwithstanding such notice of appeal, if the plaintiff give a bond conditioned to pay all costs and damages in case on the appeal the judgment of restitution be reversed and a new trial ordered. (R. L. § 4046, amended '09 c. 496 § 2) [7666]

29-432, 433, 13+676; 53-483, 55+630; 85-90, 88+426; 123-377, 143+980.

Plaintiff's eviction from the building in which he kept his property did not ipso facto deprive him of the right to remove the property. He had a reasonable time thereafter within which he might remove it. 161-135, 201+537.

**9158. Appeal—Stay—**If either party feels aggrieved by the judgment he may appeal within ten days as in other cases triable before justices of the peace except that if the party appealing remains in possession of the premises, his bond shall be conditioned to pay all costs of such appeal and abide the order the court may make therein and pay all rents and other damages justly accruing to the party excluded from possession during the pendency of the appeal. Upon the taking of such appeal all further proceedings in the case shall be stayed, except that in an action on a lease against a tenant holding over after the expiration of the term thereof or termination thereof by notice to quit, if the plaintiff give bond as provided in § 9157, a writ of restitution shall issue as if no appeal had been taken and the appellate court shall thereafter issue all needful writs and processes to carry out any judgment which may be rendered in such court. (R. L. § 4047, amended '09 c. 496 § 3) [7667]

Defective bond. Right to file new bond (59-107, 60+1083). Right of possession on appeal by defendant with stay bond (85-90, 88+426). Cited (23-415, 419). See 102-237, 113+383.

**9159. Appeal after issuance of writ—Stay—**If a writ of restitution has issued before the taking of an appeal, the justice shall give appellant a certificate of



complaint, after the determination of the leasehold estate that he may have had therein. (4039) [7659] 45-26, 47+397; 81-445, 453, 84+454.

**9151. Complaint and summons**—The person complaining shall file a complaint with a justice of the peace, describing the premises of which possession is claimed, stating the facts which authorize the recovery, and praying for restitution thereof. The justice shall thereupon issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person against whom such complaint is made to appear before him on a day and at a place in such summons named, which shall not be less than three nor more than ten days from the day of issuing the same. A copy of the complaint shall be attached to the summons, which shall state that it is so attached, and that the original has been filed. (4040) [7660]

Requisites of complaint under § 9148 (19-174, 137. See 37-76, 33+440). Requisites of complaint under § 9149 (1-88, 67; 1-179, 153; 9-34, 23; 21-398, 30-122, 14+510; 43-458, 45+864). Pleadings to be construed as in ordinary civil actions (53-456, 459, 55+603). Cited (28-461, 462, 11+63). Summons in municipal court of St. Paul, when returnable (101-253, 112+220).

**9152. Summons—How served**—The summons shall be served at least three days before the return day thereof by delivering a copy to the person against whom it is issued or if such person be a corporation, a minor under fourteen years of age or a person under guardianship, by delivering a copy as provided in the case of a service of summons in a civil action in the district court; but in case such person cannot be found in the county, the summons may be served on him at least six days before the return day thereof, by leaving a copy thereof at his last usual place of abode with a member of his family, or a person of suitable age and discretion residing at such place, or if he had no place of abode, by leaving a copy thereof upon the premises described in the complaint with a person of suitable age and discretion occupying the same or any part thereof: Provided, that in case the defendant has no usual place of abode and cannot be found in the county, of which the return of the officer, shall be prima facie proof, and further that there is no person actually occupying the premises described in the complaint, then upon the filing of an affidavit by the plaintiff or his attorney in the court in which said action is brought stating that no person is actually occupying said premises and that he believes the defendant is not in said state, or cannot be found therein, and either that he has mailed a copy of the summons to the defendant at his last known address, or that such address is not known to him, service of the summons may be made upon such defendant by posting the summons in a conspicuous place on said premises one week and by one week's published notice thereof in some newspaper printed and published in the county wherein said action is brought, or, if there be no newspaper therein, then in some newspaper printed and published at the capitol of the state and if upon the return day the said defendant or his attorney does not appear in said court in said action then the trial thereof shall be continued for one week to enable the defendant to make his appearance and defend therein. (R. L. § 4041, amended '09 c. 496 § 1) [7661] 89-444, 95+314. Cited (101-253, 112+220).

**9153. Answer—Trial**—After the return of the summons, at the time and place appointed therein, if the defendant appear, he may answer the complaint, and all matters in excuse, justification, or avoidance of the allegations thereof shall be set up in the answer; and thereupon the justice shall hear and determine the action, unless he shall adjourn the trial as provided in § 9154, but either party may demand a trial by jury.

The proceedings in such action shall be the same as in other civil actions in a justice's court, except as in this chapter otherwise provided. (4042) [7662]

Defendant must answer, if at all, on the return day or at such other time as the justice may designate (42-35, 43+687). Oral plea of not guilty (89-444, 95+314). Matters requiring affirmative equitable relief cannot be set up by answer (28-267, 273, 9+772; 31-392, 18+101; 53-456, 55+603; 68-328, 331, 71+395, 72+71; 73-108, 113, 75+1039). Matters which control the legal effect of the lease may be set up (28-267, 273, 9+772). Matters in "excuse, justification, or avoidance" are such as constitute "new matter" under general practice act (101-155, 111+962). Held not a defence (36-80, 30+446; 53-204, 209, 54+112; 61-448, 63-1099; 67-449, 70+567). Defendant cannot set up a counterclaim (67-449, 70+567. See 14-469, 351). If the complaint is insufficient defendant may move to dismiss (28-388, 390, 10+417). Judgment on the pleadings (53-456, 55+603; 61-448, 63-1099). Burden of proof (8-524, 467; 89-444, 446, 95+314). Waiver of jury trial (21-398). Justice not required to wait an hour for appearance of defendant (22-37). Section 9155 deals only with judgment upon a trial on merits, and is not inconsistent with entry of judgment when there is no such trial (102-237, 113+383).

**9154. Adjournment—Security for rent**—The justice, in his discretion, may adjourn the trial, but not beyond six days after the return day, unless by consent of parties; but in all cases mentioned in § 9149, except in an action upon a written lease signed by both parties thereto, if the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial for want of a material witness, naming him, and that he has made due exertion to obtain said witness, and believes that, if such adjournment be allowed, he will be able to procure the attendance of such witness at the trial, or his deposition, and shall give bond conditioned to pay to the plaintiff all rent which may accrue during the pendency of the action, and all costs and damages consequent upon such adjournment, the justice shall adjourn the trial for such time as may appear necessary, not exceeding three months. (4043) [7663] 41-542, 547, 43+479; 72-100, 75+114.

**9155. Judgment—Fine—Execution**—If, upon the trial, the justice or jury find the defendant or any of several defendants guilty of the allegations in the complaint, the justice shall thereupon enter judgment that the plaintiff have restitution of the premises, and tax the costs for him, and, when the action is brought under § 9148, shall impose such a fine against the defendant, not exceeding one hundred dollars, as he may deem just. The justice shall issue execution in favor of the plaintiff for such costs, and also issue a writ of restitution. If the justice or jury shall find that the defendant is not guilty as aforesaid, he shall enter judgment for the defendant, tax the costs against the plaintiff, and issue execution therefor. (4044) [7664]

Justice has reasonable time to enter judgment (21-398). Judgment on default without proof unauthorized (28-461, 11+63). Findings (26-99, 1+820; 28-461, 11+63). Judgment of dismissal on appeal (40-211, 41+972). Judgment as a bar (68-328, 330, 71+395, 72+71). Cited 89-444, 446, 95+314. Form of judgment held sufficient (53-456, 55+603). Damages for withholding or for rent cannot be recovered. The only judgment that can be rendered is for restitution and costs (53-433, 437, 55+630).

See 102-237, 113+383. Motion for new trial cannot be entertained by Justice or Municipal Judge (154-228, 191+824, 194+722).

**9156. Disagreement**—If the jury cannot agree upon a verdict, the justice may discharge them, and issue a venire, returnable forthwith, or at some other time agreed upon by the parties or fixed by the justice, for the purpose of impaneling a new jury. (4045) [7665] 53-232, 233, 54+1118.

**9157. Writ of restitution—Effect of appeal**—If the party against whom judgment for restitution is rendered or his attorney state to the justice that he intends to take an appeal, a writ of restitution shall not issue for twenty-four hours after judgment: Provided, that in an action on a lease, against a tenant holding over after the expiration of the term thereof, or a termination thereof by a notice to quit, such writ

9157-58  
227nw 656  
8460

9153  
157-M 166  
195-NW 898

contains a re-entry clause or not (21-398; 22-37; 26-99, 1+820; 41-542, 546, 43+479; 45-26, 47+397; 61-448, 63+1099; 72-100, 75+114; 74-279, 77+3).

**5. Who may maintain**—Grantee of lessor (81-445, 84+454). Subsequent lessee from lessor (30-393, 15+678).

**6. Parties defendant**—Subtenants (31-430, 18+151; 34-470, 26+602). Servants, agents or members of family of tenant (34-470, 26+602).

**7. Demand—Notice to quit**—If the action is based on the ground of non-payment of rent no notice to quit or demand of rent is necessary before suit whether the tenancy is for a fixed term or at will (21-398; 22-37; 36-173, 30+457; 72-100, 75+114; 74-279, 77+3). If the action is based on the ground of expiration of a fixed term no notice to quit is necessary before suit (30-122, 14+510); otherwise if tenancy is at will (see § 6811).

**8. Actions against mortgagors holding over**—22-349; 30-27, 14+56; 37-76, 33+440; 47-269, 50+227; 60-6, 61+818; 66-262, 68+1087; 67-197, 69+887; 73-53, 61, 75+756, 72 Am. St. Rep. 603.

**9. Actions against debtor holding over after execution sale**—4-298, 215; 25-183; 35-367, 368, 29+3. See 37-76, 33+440.

**10. Transfer to district court**—An action for forcible entry and unlawful detainer, transferred to district court after it appears that title to real estate is involved, is in effect an action in ejectment (105-348, 117+512).

**7659. Limitation**—No restitution shall be made under this chapter of any lands or tenements of which the party complained of, or his ancestors, or those under whom he holds the premises, have been in quiet possession for three years next before the filing of the complaint, after the determination of the leasehold estate that he may have had therein. (4039)

45-26, 47+397; 81-445, 453, 84+454.

**7660. Complaint and summons**—The person complaining shall file a complaint with a justice of the peace, describing the premises of which possession is claimed, stating the facts which authorize the recovery, and praying for restitution thereof. The justice shall thereupon issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person against whom such complaint is made to appear before him on a day and at a place in such summons named, which shall not be less than three nor more than ten days from the day of issuing the same. A copy of the complaint shall be attached to the summons, which shall state that it is so attached, and that the original has been filed. (4040)

Requisites of complaint under § 7657 (19-174, 137. See 37-76, 33+440). Requisites of complaint under § 7658 (1-88, 67; 1-179, 153; 9-34, 23; 21-398, 30-122, 14+510; 43-458, 45+864). Pleadings to be construed as in ordinary civil actions (53-456, 459, 55+603). Cited (28-461, 462, 11+63).

Summons in municipal court of St. Paul, when returnable (101-253, 112+220, 11 L. R. A. [N. S.] 831, 11 Ann. Cas. 60).

**7661. Summons—How served**—The summons shall be served at least three days before the return day thereof by delivering a copy to the person against whom it is issued or if such person be a corporation, a minor under fourteen years of age or a person under guardianship, by delivering a copy as provided in the case of a service of summons in a civil action in the district court; but in case such person cannot be found in the county, the summons may be served on him at least six days before the return day thereof, by leaving a copy thereof at his last usual place of abode with a member of his family, or a person of suitable age and discretion residing at such place, or if he had no place of abode, by leaving a copy thereof upon the premises described in the complaint with a person of suitable age and discretion occupying the same or any part thereof: Provided, that in case the defendant has no usual place of abode and cannot be found in the county, of which the return of the officer, shall be prima facie proof, and further that there is no person actually occupying the premises described in the complaint, then upon the filing of an affidavit by the plaintiff or his attorney in the court, in which said action is brought stating that no person is actually occupying said premises and that he believes the defendant is not in said state, or cannot be found therein, and either that he has mailed a copy of the summons to the defendant at his last known address, or that such address is not known to him, service of the summons may be made upon such defendant by posting the summons in a conspicuous place on said premises one week and by one week's published notice thereof in some newspaper printed and published in the county wherein said action is brought, or, if there be no newspaper therein, then in some newspaper printed and published at the capitol of the

state and if upon the return day the said defendant or his attorney does not appear in said court in said action then the trial thereof shall be continued for one week to enable the defendant to make his appearance and defend therein. (R. L. § 4041, amended '09 c. 496 § 1)

89-444, 95+314. Cited (101-253, 112+220, 11 L. R. A. [N. S.] 831, 11 Ann. Cas. 60).

**7662. Answer—Trial**—After the return of the summons, at the time and place appointed therein, if the defendant appear, he may answer the complaint, and all matters in excuse, justification, or avoidance of the allegations thereof shall be set up in the answer; and thereupon the justice shall hear and determine the action, unless he shall adjourn the trial as provided in § 7663, but either party may demand a trial by jury. The proceedings in such action shall be the same as in other civil actions in a justice's court, except as in this chapter otherwise provided. (4042)

Defendant must answer, if at all, on the return day or at such other time as the justice may designate (42-35, 43+687). Oral plea of not guilty (89-444, 95+314). Matters requiring affirmative equitable relief cannot be set up by answer (28-267, 273, 9+772; 31-392, 18+101; 53-456, 55+603; 68-328, 331, 71+395, 72+71; 73-108, 113, 75+1039). Matters which control the legal effect of the lease may be set up (28-267, 273, 9+772). Matters in "excuse, justification, or avoidance" are such as constitute "new matter" under general practice act (101-155, 111+962). Held not a defence (36-80, 30+446; 53-204, 209, 54+112; 61-448, 63-1099; 67-449, 70+567). Defendant cannot set up a counterclaim (67-449, 70+567. See 14-469, 351). If the complaint is insufficient defendant may move to dismiss (28-388, 390, 10+417). Judgment on the pleadings (53-456, 55+603; 61-448, 63+1099). Burden of proof (8-524, 467; 89-444, 446, 95+314). Waiver of jury trial (21-398). Justice not required to wait an hour for appearance of defendant (22-37). Section 7664 deals only with judgment upon a trial on merits, and is not inconsistent with entry of judgment when there is no such trial (102-237, 113+383).

**7663. Adjournment—Security for rent**—The justice, in his discretion, may adjourn the trial, but not beyond six days after the return day, unless by consent of parties; but in all cases mentioned in § 7658, except in an action upon a written lease signed by both parties thereto, if the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial for want of a material witness, naming him, and that he has made due exertion to obtain said witness, and believes that, if such adjournment be allowed, he will be able to procure the attendance of such witness at the trial, or his deposition, and shall give bond conditioned to pay to the plaintiff all rent which may accrue during the pendency of the action, and all costs and damages consequent upon such adjournment, the justice shall adjourn the trial for such time as may appear necessary, not exceeding three months. (4043)

41-542, 547, 43+479; 72-100, 75+114.

**7664. Judgment—Fine—Execution**—If, upon the trial, the justice or jury find the defendant or any of several defendants guilty of the allegations in the complaint, the justice shall thereupon enter judgment that the plaintiff have restitution of the premises, and tax the costs for him, and, when the action is brought under § 7657, shall impose such a fine against the defendant, not exceeding one hundred dollars, as he may deem just. The justice shall issue execution in favor of the plaintiff for such costs, and also issue a writ of restitution. If the justice or jury shall find that the defendant is not guilty as aforesaid, he shall enter judgment for the defendant, tax the costs against the plaintiff, and issue execution therefor. (4044)

Justice has reasonable time to enter judgment (21-398). Judgment on default without proof unauthorized (28-461, 11+63). Findings (26-99, 1+820; 28-461, 11+63). Judgment of dismissal on appeal (40-211, 41+972). Judgment as a bar (68-328, 330, 71+395, 72+71). Cited (89-444, 446, 95+314). Form of judgment held sufficient (53-456, 55+603). Damages for withholding or for rent cannot be recovered. The only judgment that can be rendered is for restitution and costs (53-483, 487, 55+630).

See 102-237, 113+383, cited under § 7662.

**7665. Disagreement**—If the jury cannot agree upon a verdict, the justice may discharge them, and issue a venire, returnable forthwith, or at some other time agreed upon by the parties or fixed by the justice, for the purpose of impaneling a new jury. (4045)

53-232, 233, 54+1113.

**7666. Writ of restitution—Effect of appeal**—If the party against whom judgment for restitution is rendered or his attorney state to the justice that

## CHAPTER 496—H. F. No. 262.

*An Act to amend sections 4041, 4046, 4047 and 4048 of the Revised Laws of Minnesota, 1905, relating to forcible entry and unlawful detainer, and to add thereto a new section to be known as section 4051½.*

Be it enacted by the Legislature of the State of Minnesota :

**Service of summons by publication.**—Section 1. That section 4041 be and the same is hereby, amended to read as follows, to-wit :

Section 4041. **Summons—How served**—The summons shall be served at least three days before the return day thereof by delivering a copy to the person against whom it is issued or if such person be a corporation, a minor under fourteen years of age or a person under guardianship, by delivering a copy as provided in the case of a service of summons in a civil action in the district court; but in case such person cannot be found in the county, the summons may be served on him at least six days before the return day thereof, by leaving a copy thereof at his last usual place of abode with a member of his family, or a person of suitable age and discretion residing at such place, or if he had no place of abode, by leaving a copy thereof upon the premises described in the complaint with a person of suitable age and discretion occupying the same or any part thereof;

*Provided*, that in case the defendant has no usual place of abode and cannot be found in the county, of which the return of the officer, shall be prima facie proof, and further that there is no person actually occupying the premises described in the complaint, then upon the filing of an affidavit by the plaintiff or his attorney in the court in which said action is brought stating that no person is actually occupying said premises and that he believes the defendant is not in said state, or cannot be found therein, and either that he has mailed a copy of the summons to the defendant at his last known address, or that such address is not known to him, service of the summons may be made upon such defendant by posting the summons in a conspicuous place on said premises one week and by one week's published notice thereof in some newspaper printed and published in the county wherein said action is brought, or, if there be no newspaper therein, then in some newspaper printed and published at the capitol of the state and if upon the return day the said defendant or his attorney does not appear in said court in said action then the trial thereof shall be continued for one week to enable the defendant to make his appearance and defend therein.

**Writ of restitution to be issued on notice to quit.**—Sec. 2. That section 4046 be amended to read as follows :

**4. When action will lie**—Conventional relation of landlord and tenant essential (28-267, 273, 9+772; 30-393, 15+678; 47-269, 50+227; 81-445, 451, 84+454. See 8-524, 467; 73-108, 75+1039). Unnecessary that detainer be forcible (36-80, 30+446). Will lie against tenant withholding possession after expiration of his term (28-267, 273, 9+772; 30-393, 15+678; 31-430, 18+151; 47-1, 49+327; 53-456, 55+603; 70-102, 72+841); contrary to the conditions or covenants of the lease or agreement (28-267, 273, 9+772; 36-80, 30+446; 29-432, 13+676; 32-291, 20+232; 36-102, 30+400; 51-358, 53+805; 67-449, 451, 70+567; 89-444, 95+314); after rent becomes due according to the terms of the lease or agreement whether the lease contains a re-entry clause or not (22-37; 72-100, 75+114; 41-542, 546, 43+479; 45-26, 47+397; 61-448, 63+1099; 21-398; 26-99, 1+820; 74-279, 77+3).

**5. Who may maintain**—Grantee of lessor (81-445, 84+454). Subsequent lessee from lessor (30-393, 15+678).

**6. Parties defendant**—Subtenants (31-430, 18+151; 34-470, 26+602). Servants, agents or members of family of tenant (34-470, 26+602).

**7. Demand—Notice to quit**—If the action is based on the ground of non-payment of rent no notice to quit or demand of rent is necessary before suit whether the tenancy is for a fixed term or at will (21-398; 22-37; 72-100, 75+114; 36-173, 30+457; 74-279, 77+3). If the action is based on the ground of expiration of a fixed term no notice to quit is necessary before suit (30-122, 14+510); otherwise if tenancy is at will (See § 3332).

**8. Actions against mortgagors holding over**—37-76, 33+440; 47-269, 50+227; 60-6, 61+818; 66-262, 68+1087; 67-197, 69+887; 73-58, 61, 75+756; 22-349; 30-27, 14+56.

**9. Actions against debtor holding over after execution sale**—25-183; 35-367, 368, 29+3; 4-298, 215. See 37-76, 33+440.

**4039. Limitation**—No restitution shall be made under this chapter of any lands or tenements of which the party complained of, or his ancestors, or those under whom he holds the premises, have been in quiet possession for three years next before the filing of the complaint, after the determination of the leasehold estate that he may have had therein. (6119)

45-26, 47+397; 81-445, 453, 84+454.

**4040. Complaint and summons**—The person complaining shall file a complaint with a justice of the peace, describing the premises of which possession is claimed, stating the facts which authorize the recovery, and praying for restitution thereof. The justice shall thereupon issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person against whom such complaint is made to appear before him on a day and at a place in such summons named, which shall not be less than three nor more than ten days from the day of issuing the same. A copy of the complaint shall be attached to the summons, which shall state that it is so attached, and that the original has been filed. (6110, 6127)

Requisites of complaint under § 4037 (19-174, 137. See 37-76, 33+440). Requisites of complaint under § 4038 (30-122, 14+510; 43-458, 45+864; 1-88, 67; 1-179, 153; 9-34, 23; 21-398). Pleadings to be construed as in ordinary civil actions (53-456, 459, 55+603). Cited (28-461, 462, 11+63).

**4041. Summons, how served**—The summons shall be served at least three days before the return day thereof, by delivering a copy to the person against whom it is issued, or, if such person be a corporation, a minor under fourteen years of age, or a person under guardianship, by delivering a copy as provided in the case of the service of a summons in a civil action in the district court; but, in case such person cannot be found in the county, the summons may be served on him, at least six days before the return day thereof, by leaving a copy thereof at his last and usual place of abode with a member of his family or person residing at such place of suitable age and discretion, or, if he have no such place of abode, by leaving a copy thereof upon the premises described in the complaint, with a person of suitable age and discretion occupying or in charge of the same, or any part thereof. (6111, 6113; '03 c. 373)

89-444, 95+314.

**4042. Answer—Trial**—After the return of the summons, at the time and place appointed therein, if the defendant appear, he may answer the complaint, and all matters in excuse, justification, or avoidance of the allegations thereof shall be set up in the answer; and thereupon the justice shall hear and determine the action, unless he shall adjourn the trial as provided in § 4043, but either party may demand a trial by jury. The proceedings in such action

a set to each public official of the state who now is or who may be hereinafter, under the law, entitled to a set of the Minnesota Reports, and to such other public officials, boards, commissions, or legislative committees as may, in the opinion of the secretary of state, need the same in the discharge of their public duties.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved April 21, 1903.

H. F. No. 184.

### CHAPTER 373.

Service of  
summons.

*An act to amend sections six thousand one hundred and eleven (6111) and six thousand one hundred and thirteen (6113) of chapter eighty-four (84) of the General Statutes of one thousand eight hundred and ninety-four (1894), relating to the service of summons in forcible entry and unlawful detainers.*

Be it enacted by the Legislature of the State of Minnesota:

Method  
of service.

SECTION 1. That section six thousand one hundred and eleven (6111), chapter eighty-four (84), of the General Statutes of one thousand eight hundred and ninety-four (1894), be amended so as to read as follows:

Section 6111. Such summons shall be served by delivering a certified copy thereof at least three days before the return day, as follows:

First. If the action is against a corporation, to the president or other head of the corporation, secretary, cashier, treasurer, a resident director or managing agent thereof.

Second. If against a minor under the age of fourteen years, to such minor personally, and also to his legal guardian, if any; otherwise to the father or mother of such minor; or if there is neither legal nor natural guardian of such minor within the state, then to any person having the care or control of such minor, or with whom he resides, or by whom he is employed.

Third. If against a person for whom a guardian has been appointed for any cause, to such guardian, and the defendant personally.

Fourth. In all other cases to the defendant personally; and in case personal service cannot be made as stated

above, then such summons may be served by leaving a certified copy thereof at the house of his usual abode with some person of suitable age and discretion resident therein, at least six days before the return day thereof, and the officer serving the same shall make a special return of the time and manner of serving said summons.

**Service of  
summons.**

SEC. 2. That section six thousand one hundred and thirteen (6113), chapter eighty-four (84), of the General Statutes of one thousand eight hundred and ninety-four (1894), be amended so as to read as follows:

Section 6113. If, at the time of making said complaint, it appears that the person against whom said complaint is made is absent from the county, the justice before whom the same is made shall issue his summons as hereinbefore provided, and make the same returnable not less than six nor more than ten days from the time of issuing the same; and such summons may be served by leaving a certified copy thereof at the last and usual place of such person's abode, not less than six days before the return day thereof. Such copy shall be left with some member of the family or some person residing at such place of suitable age and discretion. And if the officer cannot find in his county said person against whom such complaint is made, and said person has no last and usual place of abode therein, then such summons may be served by leaving a true and certified copy thereof upon the premises described in said complaint, not less than six days before the return day thereof. Such copy may be left with any person of suitable age and discretion using, occupying or in charge of said premises, or any part thereof, and such action shall thereupon proceed as though a personal service were made of said summons.

**Return on  
summons.**

SEC. 3. This act shall take effect and be in force from and after its passage, and all acts and parts of acts inconsistent with the provisions hereof are hereby repealed.

Approved April 21, 1903.

CHAPTER 84.

FORCIBLE ENTRIES AND UNLAWFUL DETAINERS.

§ 6108. Forcible entry into lands or tenements forbidden.

No person shall hereafter make an entry into lands or tenements, except in cases where an entry is given by law; and in such cases, not with strong hands, nor with a multitude of people, but only in a peaceable manner; if any person from henceforth does to the contrary, he shall be punished by fine.

(G. S. 1866, c. 84, § 1; G. S. 1878, c. 84, § 1.)

See, generally, as to forcible entries and unlawful detainers, *Steele v. Bond*, 23 Minn. 267, 272, 9 N. W. Rep. 772; *Gray v. Hurley*, 28 Minn. 388, 10 N. W. Rep. 417; *State v. Municipal Court*, 28 Minn. 162, 2 N. W. Rep. 163; *Hoffman v. Parsons*, 27 Minn. 236, 6 N. W. Rep. 797; *Whitaker v. McClung*, 14 Minn. 170 (Gil. 131).

§ 6109. Justices of peace to have jurisdiction, etc.

Any justice of the peace has authority to inquire, as hereinafter directed, as well against those who may make unlawful or forcible entry into lands or tenements, and detain the same, as against those who, having lawful or peaceful entry into lands or tenements, unlawfully and forcibly detain the same; and if it is found, upon such inquiry, that an unlawful or forcible entry has been made, and that said lands or tenements are unlawfully detained by force and strong hand, or that the same, after a lawful entry, are so held or detained unlawfully, such justice shall cause the party complaining to have restitution thereof.

(G. S. 1866, c. 84, § 2; G. S. 1878, c. 84, § 2.)

To maintain the action under §§ 6108, 6109, the entry need not be forcible, but the detainer must be unlawful, and with force and strong hand; that is, under circumstances of actual violence or terror. *Davis v. Woodward*, 19 Minn. 174, (Gil. 137.)

See *Hennessey v. Pederson*, 23 Minn. 461, 11 N. W. Rep. 63; *Petsch v. Biggs*, 31 Minn. 392, 18 N. W. Rep. 101; *Anderson v. Schultz*, 37 Minn. 76, 33 N. W. Rep. 440.

§ 6110. Upon complaint made, justice to issue summons.

When any complaint is made in writing, to any justice of the peace, of any such unlawful or forcible entry, or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person against whom such complaint is made, to appear before the said justice, on a day in such summons named, which shall not be less than six nor more than ten days from the day of issuing such summons.

(G. S. 1866, c. 84, § 3; G. S. 1878, c. 84, § 3.)

A complaint under c. 84, Gen. St., for "forcible entry and detainer," which alleges the plaintiff's actual possession of the premises by his wife, and that defendant did make an unlawful and forcible entry into and upon, and has ever since unlawfully and forcibly detained, the premises, sufficiently alleges plaintiff's possession, and defendant's entry and detainer. *Davis v. Woodward*, 19 Minn. 174, (Gil. 137.)

The complaint in an action for forcible entry and detainer must particularly describe the premises. *Lewis v. Steele*, 1 Minn. 89, (Gil. 67.)

§ 6111. Summons, how served—Return.

Such summons shall be served upon the person against whom the same is issued, by delivering a certified copy thereof to him, at least three days before the return-day thereof; and the officer serving the same shall make a special return of the time and manner of serving said summons.

(G. S. 1866, c. 84, § 4; G. S. 1878, c. 84, § 4.)

§ 6112. Proceedings on return of summons—Trial.

After the return of said summons, and at the time and place appointed therein, the said justice shall proceed to hear and determine said complaint: provided, that if either party calls for a trial by jury, the said justice shall



# MINNESOTA STATUTES 1894

## §§ 6112-6115 FORCIBLE ENTRIES AND UNLAWFUL DETAINERS. [Ch. 84

issue a venire, in the same manner, and upon the same terms, as in other cases in justices' courts; and such jury shall be sworn as in other cases.

(G. S. 1866, c. 84, § 5; G. S. 1878, c. 84, § 5.)

In proceedings under this chapter, by a landlord against his tenant, to recover possession of premises for non-payment of rent, no previous demand of the rent is required. *Spooner v. French*, 22 Minn. 37.

In an action before a justice, if defendant fails to call for a jury trial, he will be deemed to have waived his right thereto. *Gibbens v. Thompson*, 21 Minn. 398.

A justice of the peace has a reasonable time after the submission of the case in which to consider the same and enter his judgment. Two days held not an unreasonable time. *Id.*

Time for answering in municipal court of Minneapolis. *Universalist General Convention v. Bottineau*, 42 Minn. 35, 43 N. W. Rep. 687.

See *Hennessey v. Pederson*, 23 Minn. 461, 11 N. W. Rep. 63.

### § 6113. Summons—Service by leaving copy—Return.

If, at the time of making said complaint, it appears that the person against whom said complaint is made is absent from the county, the justice before whom the same is made shall issue his summons as hereinbefore provided, and make the same returnable not less than six, nor more than ten, days from the time of issuing the same; and such summons may be served by leaving a true and attested copy thereof at the last and usual place of such person's abode, not less than six days before the return-day thereof. Such copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall be explained by the officer; and the said officer shall make a special return of the time and manner of serving said summons; and the action shall thereafter proceed as though a personal service were made of such summons. And if the officer cannot find in his county said person against whom such complaint is made, and said person has no last and usual place of abode therein, then such summons may be served by leaving a true and certified copy thereof upon the premises described in such complaint, not less than six days before the return-day thereof. Such copy may be left with any person using, occupying, or in charge of said premises, or any part thereof, and such action shall thereupon proceed as though a personal service were made of said summons.

(G. S. 1866, c. 84, § 6; G. S. 1878, c. 84, § 6; as amended 1881, c. 50, § 1.)

### § 6114. Adjournments—Security for rent.

The justice of the peace may, at his discretion, adjourn any trial under this chapter, not exceeding six days, but in all cases mentioned in section eleven of this chapter, except a case brought upon a written lease, signed and acknowledged by both parties thereto, when the defendant, his agent or attorney, makes oath that he cannot safely proceed to trial for the want of some material witness, naming him; that he has made due exertion to obtain said witness, and believes if such an adjournment is allowed he will be able to procure the attendance of said witness, or his deposition, in season to produce the same upon such trial; and if such person will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent which may accrue during the pendency of such action, and all costs and damages consequent upon such adjournment,—the justice shall adjourn said cause for such reasonable time as appears necessary, not exceeding three months; but no such adjournment shall be allowed where the action is brought upon a written lease, executed as aforesaid.

(G. S. 1866, c. 84, § 7; G. S. 1878, c. 84, § 7; as amended 1881, Ex. S. c. 9, § 1.)

See *Woodcock v. Carlson*, 41 Minn. 542, 547, 43 N. W. Rep. 479.

### § 6115. Depositions taken and used, when.

The deposition of any witness whose testimony is considered necessary by either party may be taken, for the same reason, in the same manner, and with

(1650)

amended by adding thereto the following, viz: To be paid upon allowance by the Board of County Commissioners in the same manner as other claims are paid.

Compensation  
of board of  
auditors.

SEC. 2. All acts or parts of acts inconsistent herewith are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 21, 1881.

---

## CHAPTER 49.

AN ACT TO AMEND SECTION NINETY-NINE (99), TITLE SIX (6), OF CHAPTER SIXTY-SIX (66), GENERAL STATUTES OF ONE THOUSAND EIGHT HUNDRED AND SEVENTY-EIGHT (1878), IN RELATION TO ACTIONS.

*Be it enacted by the Legislature of the State of Minnesota:*

SECTION 1. That section ninety-nine (99), title six (6), of chapter sixty-six (66) of the General Statutes of one thousand eight hundred and seventy-eight (1878), be and the same hereby is amended so as to read as follows:

Frivolous  
answers may  
be stricken  
out.

Section 99. Sham, irrelevant or frivolous answers, defenses or replies, and frivolous demurrers, may be stricken out, or judgment rendered notwithstanding the same, on motion as for want of an answer.

SEC. 2. This act is to take effect and be in force from and after its passage.

Approved February 19, 1881.

---

## CHAPTER 50.

AN ACT TO AMEND SECTION SIX (6), OF CHAPTER EIGHTY-FOUR (84), OF GENERAL STATUTES [OF] ONE THOUSAND EIGHT HUNDRED AND SEVENTY-EIGHT (1878), RELATING TO THE SERVICE OF SUMMONS IN FORCIBLE ENTRY ACTIONS.

*Be it enacted by the Legislature of the State of Minnesota:*

SECTION 1. Section six (6), of chapter eighty-four (84), of General Statutes of one thousand eight hundred and seventy-

eight (1878), of the State of Minnesota, is hereby amended by adding at the end of said section the following words, that is to say:

And if the officer cannot find in his county said person against whom such complaint is made and said person has no last and usual place of abode therein, then such summons may be served by leaving a true and certified copy thereof upon the premises described in such complaint not less than six (6) days before the return day thereof; such copy may be left with any person using, occupying or in charge of said premises or any part thereof, and such action shall thereupon proceed as though a personal service were made of said summons.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 18, 1881.

Forcible entry  
—how sum-  
mons shall be  
served.

## CHAPTER 51

AN ACT TO AMEND SECTION SEVENTEEN (17), CHAPTER THIRTY-SIX (36) OF THE GENERAL STATUTES OF ONE THOUSAND EIGHT HUNDRED AND SEVENTY-EIGHT (1878), RELATING TO EDUCATION.

*Be it enacted by the Legislature of the State of Minnesota:*

SECTION 1. That the following words be added to proviso second (2d), section seventeen (17), chapter thirty-six (36), of the General Statutes of one thousand eight hundred and seventy-eight (1878): In case a common school district becomes extinct, or has heretofore become extinct, in consequence of having all its territory attached to other districts, any funds in the county treasury, or in the hands of the treasurer of such extinct district, after the payment of all debts of such district, properly and legally payable out of such funds, shall be distributed by the county auditor to the districts to which its territory has been annexed, in proportion to the valuation of the real property so annexed to each.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 25, 1881.

Extinct school  
districts—how  
funds shall be  
disposed of.

CHAPTER LXXXIV.

FORCIBLE ENTRIES AND UNLAWFUL DETAINERS.

SECTION.

1. Forcible entry into lands or tenements forbidden.
2. Justices of the peace to have jurisdiction.
3. Upon complaint made, justice shall issue summons.
4. Summons, how served.
5. Proceedings on return of summons.
6. Summons served by leaving copy, when.
7. Adjournment of trial granted, when.
8. Depositions taken and used, when.
9. Judgment when defendant is found guilty—costs.
10. Proceedings when jury cannot agree.

SECTION.

11. Proceedings to eject tenants—complaint before justice.
12. Restitution not to be made, when—writ not to issue in any case for twenty-four hours.
13. Appeal, how and when taken.
14. Proceedings stayed by appeal.
15. Appeal after issue of writ—certificate—stay.
16. Proceedings not to be dismissed for want of form.
17. Amendments may be allowed.
18. Answer to contain, what.
19. Compelling return from justice.
20. Schedule of forms.

§ 1. **Forcible entry into lands or tenements forbidden.** No person shall hereafter make an entry into lands or tenements, except in cases where an entry is given by law; and in such cases, not with strong hands, nor with a multitude of people, but only in a peaceable manner; if any person from henceforth does to the contrary, he shall be punished by fine.

§ 2. **Justices of peace to have jurisdiction, etc.** Any justice of the peace has authority to inquire, as hereinafter directed, as well against those who may make unlawful or forcible entry into lands or tenements, and detain the same, as against those who, having lawful or peaceful entry into lands or tenements, unlawfully and forcibly detain the same; and if it is found, upon such inquiry, that an unlawful or forcible entry has been made, and that said lands or tenements are unlawfully detained by force and strong hand, or that the same, after a lawful entry, are so held or detained unlawfully, such justice shall cause the party complaining to have restitution thereof.

19 M. 134.

§ 3. **Upon complaint made, justice to issue summons.** When any complaint is made in writing, to any justice of the peace, of any such unlawful or forcible entry, or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person against whom such complaint is made, to appear before the said justice, on a day in such summons named, which shall not be less than six nor more than ten days from the day of issuing such summons.

1 M. 67 (88), 153 (179); 19 M. 174.

§ 4. **Summons, how served—return.** Such summons shall be served upon the person against whom the same is issued, by delivering a certified copy thereof to him, at least three days before the return-day thereof; and the officer serving the same shall make a special return of the time and manner of serving said summons.

1 M. 153 (179.)

§ 5. **Proceedings on return of summons—trial.** After the return of said summons, and at the time and place appointed therein, the said justice shall proceed to hear and determine said complaint: *provided*, that if either party calls for a trial by jury, the said justice shall issue a venire, in the same manner, and upon the same terms, as in other cases in justices' courts; and such jury shall be sworn as in other cases.

21 M. 308; 22 M. 37.

§ 6. **Summons served by leaving copy, when—return.** If, at the time of making said complaint, it appears that the person against whom said complaint is made is absent from the county, the justice before whom the same is made shall issue his summons as hereinbefore provided, and make the same returnable not less than six, nor more than ten days from the time of issuing the same; and such summons may be served by leaving a true and attested copy thereof at the last and usual place of such person's abode, not less than six days before the return-day thereof; such copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall be explained by the officer; and the said officer shall make a special return of the time and manner of serving said summons; and the action shall thereafter proceed as though a personal service were made of such summons.

And § 7. See 1883 Sup't, p. 84.  
And § 7. See 1881 Sup't, p. 107.  
§ 8. See 1881 Sup't, p. 107.

§ 7. **Adjournment of trial granted, when—security.** The justice may, at his discretion, adjourn any trial under this chapter, not exceeding six days; but in all cases mentioned in section eleven of this chapter, when the defendant, his agent or attorney, makes oath that he cannot safely proceed to trial, for the want of some material witness, naming him; that he has made due exertion to obtain said witness; and believes, if an adjournment is allowed, he will be able to procure the attendance of said witness, or his deposition, in season to produce the same upon such trial; and if such person will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent which may accrue during the pendency of such action, and all costs and damages consequent upon such adjournment, the justice shall adjourn said cause for such reasonable time as appears necessary, not exceeding three months.

§ 8. **Depositions taken and used, when.** The deposition of any witness whose testimony is considered necessary by either party may be taken, for the same reasons, in the same manner, and with the same effect, as is provided by law for taking of depositions to be used in justices' courts.

§ 9. **Judgment, when defendant is found guilty—costs.** If, upon the trial of any complaint under this chapter, the justice or jury shall find that the defendant or defendants, or either of them, are guilty of the allegations in the complaint, the said justice shall thereupon enter judgment for the complainant to have restitution of the premises, and shall impose such fine, not exceeding one hundred dollars, as he may deem just, and shall tax the costs for the complainant, and may issue execution in favor of said complainant, for such costs, and shall also award and issue a writ of restitution; but if the said justice or the jury find that the person complained of is not guilty, the justice shall tax the costs against the complainant, and issue execution therefor.

21 M. 398.

§ 10. **Proceedings when jury cannot agree.** If the jury cannot agree upon a verdict, the justice may discharge them, and issue a venire, returnable forthwith, or at some other time agreed upon by the parties, or fixed by the justice, for the purpose of impannelling a new jury.

§ 11. **Proceedings to eject tenants, etc.** When any person holds over any lands or tenements, after a sale thereof on an execution, judgment, or on foreclosure of a mortgage by advertisement, and expiration of the time for redemption, or after the termination of the time for which they are demised or let to him, or to the person under whom he holds possession, or contrary to the conditions or covenants of the lease or agreement under which he holds, or after any rent becomes due, according to the terms of such lease or agreement, or when any tenant at will holds over after the determination of any such estate by notice to quit, in all such cases the party entitled to possession may make complaint thereof to any justice of the peace of the county, and the justice shall proceed to hear, try and determine the same, in the same manner as in other

are unlawfully detained by force and strong hand, or that the same after a lawful entry, are so held or detained unlawfully, such justice shall cause the party complaining to have restitution thereof.

Upon complaint made justice shall issue summons.  
1 Min. 89.  
1 Min. 179.

SEC. 3. When any complaint is made in writing, to any justice of the peace, of any such unlawful or forcible entry or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person against whom such complaint is made, to appear before the said justice on a day in such summons named, which shall not be less than six nor more than ten days from the day of issuing such summons.

Summons, how served.  
1 Min. 179.

SEC. 4. Such summons shall be served upon the person against whom the same is issued, by delivering a certified copy thereof to him, at least three days before the return day thereof; and the officer serving the same shall make a special return of the time and manner of serving said summons.

Proceedings on return of summons.

SEC. 5. After the return of said summons, and at the time and place appointed therein, the said justice shall proceed to hear and determine said complaint: *provided*, that if either party calls for a trial by jury, the said justice shall issue a venire, in the same manner, and upon the same terms, as in other cases in justices' courts; and such jury shall be sworn as in other cases.

Summons served by leaving copy, when.

SEC. 6. If at the time of making said complaint, it appears that the person against whom said complaint is made, is absent from the county, the justice before whom the same is made, shall issue his summons as hereinbefore provided, and make the same returnable not less than six, nor more than ten days from the time of issuing the same, and such summons may be served by leaving a true and attested copy thereof at the last and usual place of such person's abode, not less than six days before the return day thereof; such copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall be explained by the officer, and the said officer shall make a special return of the time and manner of serving said summons; and the action shall thereafter proceed as though a personal service were made of such summons.

Adjournment of trial granted, when.

SEC. 7. The justice may at his discretion adjourn any trial under this chapter, not exceeding six days; but in all cases mentioned in section eleven of this chapter, when the defendant, his agent or attorney makes oath that he cannot safely proceed to trial, for the want of some material witness, naming him, that he has made due exertion to obtain said witness, and believes if an adjournment is allowed, he will be able to procure the attendance of said witness, or his deposition, in season to produce the same upon such trial, and if such person will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent which may accrue during the pendency of such action, and all costs and damages consequent upon such adjournment, the justice shall adjourn said cause for such reasonable time as appears necessary, not exceeding three months.

Depositions taken and used, when.

SEC. 8. The deposition of any witness whose testimony is considered necessary by either party, may be taken for the same reason, in the same manner, and with the same effect, as is provided by law for taking of depositions to be used in justices' courts.

Judgment, how entered when defendant is found guilty.

SEC. 9. If, upon the trial of any complaint under this chapter, the justice or jury shall find that the defendant or defendants, or either of them, are guilty of the allegations in the complaint, the said justice shall thereupon enter judgment for the complainant, to have restitution of the premises, and shall impose such fine, not exceeding one hundred dollars,

unlawful or forcible entry into lands, tenements, or other possessions, and detain the same, as against those who having lawful and peaceful entry into lands, tenements, or other possessions, unlawfully and forcibly detain the same; and if it be found upon such inquiry, that an unlawful or forcible entry hath been made, and that said lands, tenements or other possessions are unlawfully detained by force and strong hand, or that the same, after a lawful entry, are so held or detained unlawfully, then such justice shall cause the party complaining to have restitution thereof.

Upon complaint being filed, justice to issue summons.

(3.) SEC. III. When any complaint shall be made in writing, to any justice of the peace, of any such unlawful or forcible entry or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the same county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before the said justice on a day in such summons named, which shall not be less than six, nor more than ten days from the day of issuing such summons, and at the place therein mentioned.

Summons how served.

(4.) SEC. IV. Such summons shall be served upon the person or persons against whom the same is issued, by delivering a certified copy thereof to such person or persons, at least three days before the return day thereof; and the officer serving the same shall make a special return of the time and manner of serving said summons.

Trial by jury may be demanded by either party.

(5.) SEC. V. After the return of said summons, served as hereinbefore provided; and at the time and place appointed in said summons, the said justice shall proceed to hear and determine said complaint: *provided*, that if either party shall call for a trial by jury, the said justice shall issue a venire, in the same manner, and upon the same terms, as in other cases provided for trial by jury in justice's court; and such jury shall be sworn as in other cases.

Summons may be served by copy in certain cases.

(6.) SEC. VI. If at the time of making said complaint, it shall be made to appear that the person or persons against whom said complaint is made, or either of them are absent from the county, it shall be the duty of the justice before whom the same is made, to issue his summons as hereinbefore provided, and make the same returnable not less than six, nor more than ten days from the time of issuing the same, and such summons may be served by leaving a true and attested copy thereof at the last and usual place of such person or persons' abode, not less than six days before the return day thereof; such copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall be explained by the officer leaving the same; and the said officer shall make a special return of the time and manner of serving said summons; and the suit shall thereafter proceed the same as though a personal service were had of such summons.

Continuance when granted.

(7.) SEC. VII. The justice may at his discretion, adjourn any trial under this chapter, not exceeding six days; but in all cases mentioned in section twelve of this chapter, if the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial, for the want of some material witness, naming him, that he has made due exertion to obtain said witness, and believes if an adjournment be allowed, he will be able to procure the attendance of said witness, or his deposition, in season to produce the same upon such trial; in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent which may accrue during the pendency of such suit, and all costs and damages consequent upon such adjournment, the said justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding three months.

FORCIBLE ENTRY AND DETAINER.

SECTION

- 12. Action lies to recover possession of leased premises.
- 13. Limitation to preceding section.
- 14. Complainant may bring civil action against defendant.
- 15. Penalty for neglect to serve as juror.
- 16. Fines to be for the use of common schools.
- 17. Appeal when and how taken.
- 18. Stay of proceedings upon appeal.

SECTION

- 19. If restitution allowed before appeal, justice to give certificate.
- 20. Proceeding in appellate court.
- 21. Amendments allowed.
- 22. What matters to be set up in answer.
- 23. Appellate court may compel amended return.
- 24. Forms adopted.

No person to make forcible entry into lands, &c.

SEC. 1. No person or persons shall hereafter make an entry into lands, tenements, or other possessions, but in cases where entry is given by law; and in such cases, not with strong hands, nor with a multitude of people, but only in a peaceable manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine.

Justice to try such entries and detainers.

SEC. 2. Any justice of the peace shall have authority to inquire as hereinafter directed, as well against those who may make unlawful or forcible entry into lands, tenements, or other possessions, and detain the same as against those who, having lawful and peaceful entry into lands, tenements, or other possessions, unlawfully detain the same; and if it be found upon such inquiry, that an unlawful or forcible entry hath been made, and that the said lands, tenements, or other possessions, are unlawfully held, or are detained by force and strong hand, or that the same, after a lawful entry, are held unlawfully, then such justice shall cause the party complaining to have restitution thereof.

Upon complaint being filed, justice to issue summons.

SEC. 3. When any complaint shall be made in writing, to any justice of the peace, of any such unlawful or forcible entry or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the same county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before the said justice on a day in such summons named, which shall not be less than six, nor more than ten days from the day of issuing such summons, and at the place therein mentioned.

Summons how served.

SEC. 4. Such summons shall be served upon the person or persons against whom the same is issued, by delivering a certified copy thereof to such person or persons, at least three days before the return day thereof; and the officer serving the same shall make a special return of the time and manner of serving said summons.

Trial by jury may be demanded by either party.

SEC. 5. After the return of said summons, served as hereinbefore provided, and at the time and place appointed in said summons, the said justice shall proceed to hear and determine said complaint; *Provided*, That if either party shall call for a trial by jury, the said justice shall issue a venire, in the same manner, and upon the same terms, as in other cases provided for trial by jury in justices' court; and such jury shall be sworn as in other cases.

Summons may be served by copy in certain cases.

SEC. 6. If at the time of making said complaint, it shall be made to appear that the person or persons against whom said complaint is made, or either of them, are absent from the county, it shall be the duty of the justice before whom the same is made, to issue his summons as hereinbefore provided, and make the same returnable not less than six, nor more than ten days from the time of issuing the same, and such summons may be served by leaving a true and attested copy thereof at the last and usual place of such person or persons' abode, not less than six days before the return day thereof; such copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall be explained by the officer leaving the same; and the said officer shall make a special return of the time and manner of serving said summons; and



the suit shall thereafter proceed the same as though a personal service were had of such summonses.

SEC. 7. The justice may at his discretion, adjourn any trial under this chapter, not exceeding six days; but in all cases mentioned in section twelve of this chapter, if the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial, for the want of some material witness, naming him, that he has made due exertion to obtain said witness, and believes if an adjournment be allowed, he will be able to procure the attendance of said witness, or his deposition, in season to produce the same upon such trial; in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent which may accrue during the pendency of such suit, and all costs and damages consequent upon such adjournment, the said justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding three months.

Continuance when granted.

SEC. 8. The deposition of any witness, whose testimony may be considered necessary by either party, may be taken for the same reason, in the same manner, and with the same effect, as is provided by law for taking of depositions to be used in justices' courts.

Depositions may be used in certain cases.

SEC. 9. If, upon the trial of any complaint under this chapter, the justice or jury shall find that the defendant or defendants, or either of them, are guilty of the allegations in the complaint, the said justice shall thereupon enter judgment for the complainant, to have restitution of the premises, and shall impose such fine, not exceeding one hundred dollars, considering all the circumstances, as he may deem just, and shall tax the costs for the complainant, and may issue execution in favor of said complainant, for such costs as in other actions *ex delicto*, and the said justice shall also award and issue a writ of restitution; but if the said justice or the jury, find that the person complained of is not guilty, the complaint, in their opinion, not having been supported, the said justice shall tax the cost against the complainant, and issue execution therefor.

Judgment how entered when defendant is found guilty.

SEC. 10. If the jury, impannelled as aforesaid, cannot agree upon a verdict, the justice before whom the trial is pending, may discharge said jury, if in his opinion they are not likely to agree upon a verdict, and issue a venire returnable forthwith, or at some other time agreed upon by the parties, for the purpose of impanneling a new jury.

Proceedings where jury cannot agree.

SEC. 11. The complainant of any forcible entry, or of any unlawful detainer, as aforesaid, who shall recover against the person complained of as aforesaid, shall be entitled to recover treble damages, with costs of suit, by a civil action against the offender or offenders, to be brought before any justice of the peace, or court of record, for that purpose: *Provided, always,* That nothing contained in the foregoing part of this chapter, shall be construed to extend to any person or persons who have had quiet, peaceable, and uninterrupted occupation of any lands, tenements, or other possessions, otherwise than by demise or lease, for the period of three whole years, next before the entering of such complaint, anything in this chapter to the contrary notwithstanding.

Treble damages allowed.

SEC. 12. When any person shall hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised or let to him, or her, or to the person under whom he or she holds possession, or contrary to the conditions or covenants of the lease or agreement, under which he or she holds, or after any rent shall have become due, according to the terms of such lease or agreement, and shall remain unpaid for the space of three days; in all such cases, if the lessor, his heirs, executors, administrators, assigns, agent or attorney, shall make demand in writing of such tenants, that he or she shall deliver possession of the premises held as aforesaid, and if such tenant

Action lies to recover possession of leased premises.

## Editor's and Revisor's Notes (3)

### HISTORICAL AND STATUTORY NOTES

#### Derivation:

St.1998, § 566.06.

Laws 1986, c. 444.

Laws 1985, c. 214, § 1.

Laws 1981, c. 168, § 4.

Laws 1976, c. 123, § 1.

Laws 1973, c. 611, § 9.

St.1927, § 9152.

Gen.St.1923, § 9152.

Gen.St.1913, § 7661.

Laws 1909, c. 496, § 1.

Rev.Laws 1905, § 4041.

Laws 1903, c. 373.

Gen.St.1894, §§ 6111, 6113.

Laws 1881, c. 50, § 1.

Gen.St.1878, c. 84, §§ 4, 6.

Gen.St.1866, c. 84, §§ 4, 6.

Pub.St.1858, c. 77, §§ 4, 6.

Rev.St. (Terr.), c. 87, §§ 4, 6.

[Laws 2005, c. 10, art. 2, § 4](#), subd. 2, directed the revisor of statutes to delete references to the terms “constable”, “deputy constable”, “marshal”, “city marshals”, and “statutory city marshal” and to make changes necessary to correct punctuation, grammar, or structure of the remaining text and preserve its meaning in certain enumerated sections.

#### 2023 Legislation

[Laws 2023, c. 52, art. 19, § 106](#), amended the section as follows:

“(a) The summons and complaint must be served at least seven days before the date of the court appearance specified in section 504B.321, in the manner provided for service of a summons in a civil action in district court. -  
~~It may be served by any person not named a party to the action.~~”

“(b) If the defendant cannot be found in the county, the summons and complaint may be served at least seven days before the date of the court appearance by:”

\* \* \*

“(d) Where the defendant cannot be found in the county, service of the summons and complaint may be made upon the defendant by posting the summons in a conspicuous place on the property for not less than one week if:”

\* \* \*

“(2) the plaintiff or the plaintiff's attorney has signed and filed with the court an affidavit stating that:

“(i) the defendant cannot be found, or that the plaintiff or the plaintiff's attorney believes that the defendant is not in the state; ~~and~~

“(ii) a copy of the summons has been mailed to the defendant at the defendant's last known address if any is known to the plaintiff ~~; or~~

“ (iii) the plaintiff or plaintiff's attorney has communicated to the defendant that an eviction hearing has been scheduled, including the date, time, and place of the hearing specified in the summons, by at least one form of written communication the plaintiff regularly uses to communicate with the defendant that have a date and time stamp. ”

\* \* \*

Laws 2023, c. 52, art. 19, § 116, provided:

“Sec. 116. EFFECTIVE DATE.

“Sections 103 to 115 are effective January 1, 2024, and apply to actions filed on or after that date.”