

**RESOLUTION 07-07-2007**

**DIGEST**

Civil Procedure: Venue for Actions Against Former Landlord

Amends Code of Civil Procedure section 395 to permit a former tenant to file suit for recovery of a security deposit from a former landlord in the tenant’s new home county.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

**DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 395 to permit a former tenant to file suit for recovery of a security deposit from a former landlord in the tenant’s new home county. This resolution should be disapproved because the most logical forum for landlord/tenant disputes is the county where the property is located.

Disputes about security deposits often revolve around the condition of the real property. Civil Code section 1950.5 requires landlords to follow a detailed procedure for retaining any part of a security deposit, including providing an itemized list of repairs and cleaning charges made after the tenant vacates the residence and providing invoices for supplies and materials for the repairs. In a dispute over that information, the evidence is most likely to be in the county where the real property is located. This resolution would also force the landlord to travel perhaps hundreds of miles to present evidence to a court about the condition of the property. For many small property owners, that cost would be prohibitive.

This proposed amendment also creates ambiguity regarding where proper venue for the security deposit actions would lie. As written, the proposed amendment makes actions described in Civil Code section 1950.5 an exception to the venue rules set forth in sub-section 395(b), but it does not add a provision about where proper venue would be for these actions.

**TEXT OF RESOLUTION**

RESOLVED that the Conference of Delegates recommends that the Legislature amend Section 395 of the Code of Civil Procedure as follows:

- 1 §395
- 2 (a) Except as otherwise provided by law and subject to the power of the court to
- 3 transfer actions or proceedings as provided in this title, the superior court in the county
- 4 where the defendants or some of them reside at the commencement of the action is the
- 5 proper court for the trial of the action. If the action is for injury to person or personal
- 6 property or for death from wrongful act or negligence, the superior court in either the county
- 7 where the injury occurs or the injury causing death occurs or the county where the
- 8 defendants, or some of them reside at the commencement of the action, is a proper court for

9 the trial of the action. In a proceeding for dissolution of marriage, the superior court in the  
10 county where either the petitioner or respondent has been a resident for three months next  
11 preceding the commencement of the proceeding is the proper court for the trial of the  
12 proceeding. In a proceeding for nullity of marriage or legal separation of the parties, the  
13 superior court in the county where either the petitioner or the respondent resides at the  
14 commencement of the proceeding is the proper court for the trial of the proceeding. In a  
15 proceeding to enforce an obligation of support under Section 3900 of the Family Code, the  
16 superior court in the county where the child resides is the proper court for the trial of the  
17 action. In a proceeding to establish and enforce a foreign judgment or court order for the  
18 support of a minor child, the superior court in the county where the child resides is the  
19 proper court for the trial of the action. Subject to subdivision (b), if a defendant has  
20 contracted to perform an obligation in a particular county, the superior court in the county  
21 where the obligation is to be performed, where the contract in fact was entered into, or  
22 where the defendant or any defendant resides at the commencement of the action is a proper  
23 court for the trial of an action founded on that obligation, and the county where the  
24 obligation is incurred is the county where it is to be performed, unless there is a special  
25 contract in writing to the contrary. If none of the defendants reside in the state or if they  
26 reside in the state and the county where they reside is unknown to the plaintiff, the action  
27 may be tried in the superior court in any county that the plaintiff may designate in his or her  
28 complaint, and, if the defendant is about to depart from the state, the action may be tried in  
29 the superior court in any county where either of the parties reside or service is made. If any  
30 person is improperly joined as a defendant or has been made a defendant solely for the  
31 purpose of having the action tried in the superior court in the county where he or she resides,  
32 his or her residence shall not be considered in determining the proper place for the trial of  
33 the action.

34 (b) Subject to the power of the court to transfer actions or proceedings as provided in  
35 this title, in an action arising from an offer or provision of goods, services, loans or  
36 extensions of credit intended primarily for personal, family or household use, other than an  
37 obligation described in Section 1812.10 or Section 2984.4 of the Civil Code, an action to  
38 recover security for a residential rental agreement pursuant to Civil Code Section 1950.5, or  
39 an action arising from a transaction consummated as a proximate result of either an  
40 unsolicited telephone call made by a seller engaged in the business of consummating  
41 transactions of that kind or a telephone call or electronic transmission made by the buyer or  
42 lessee in response to a solicitation by the seller, the superior court in the county where the  
43 buyer or lessee in fact signed the contract, where the buyer or lessee resided at the time the  
44 contract was entered into, or where the buyer or lessee resides at the commencement of the  
45 action is the proper court for the trial of the action. In the superior court designated in this  
46 subdivision as the proper court, the proper court location for trial of a case is the location  
47 where the court tries that type of case that is nearest or most accessible to where the buyer or  
48 lessee resides, where the buyer or lessee in fact signed the contract, where the buyer or  
49 lessee resided at the time the contract was entered into, or where the buyer or lessee resides  
50 at the commencement of the action. Otherwise, any location of the superior court  
51 designated as the proper court in this subdivision is a proper court location for the trial. The  
52 court may specify by local rule the nearest or most accessible court location where the court  
53 tries that type of case.

54 (c) Any provision of an obligation described in subdivision (b) waiving that  
55 subdivision is void and unenforceable.

(Language to be added underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

#### STATEMENT OF REASONS

Existing Law: It is unclear whether a tenant can file an action to recover a wrongfully withheld security deposit from his or her former landlord in the tenant's new home county.

This Resolution: This resolution provides that a former tenant may file an action to recover a wrongfully withheld residential rental security deposit in the county in which the former tenant now lives.

The Problem: Section 395, subdivision (b) of the Code of Civil Procedure provides that venue is appropriate in the plaintiff's county of residence in an action arising out of a transaction involving "an offer or provision of goods, services, loans or extensions of credit intended primarily for personal, family or household use." There is no case law indicating whether a residential tenant's action to recover a wrongfully withheld security deposit comes within this venue provision.

Disputes over security deposits often arise between a former tenant and his or her former landlord. Civil Code §1950.5 sets forth a detailed procedure for and strictly limits those situations where a landlord can retain all or part of the tenant's security deposit. The statute also provides a penalty for bad faith withholding of a tenant's deposit. Because the tenant has often moved to a different county, it is often difficult and expensive for the tenant to sue the landlord in the county where the tenancy was located or where the rental contract was executed. Amending the statute to include such disputes within the scope of subdivision (b) would reduce these burdens upon tenants who are already at a substantial disadvantage from a landlord who wrongfully retains security deposits or other amounts owed to the tenant. This amendment is consistent with the clear policy evident in Civil Code §1950.5 which is intended to discourage landlords from playing games with a tenant's security deposit.

#### IMPACT STATEMENT

This resolution would not affect any other statute, regulation, or law.

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## COUNTERARGUMENTS

### ORANGE COUNTY BAR ASSOCIATION

The proposed amendment, as drafted, not only fails to accomplish the proponent's goals but creates a void regarding proper venue involving disputes arising from the withholding of residential security deposits upon termination of leases. As written, the proposed amendment makes actions described in Civil Code section 1950.5 an exception to the venue rules of section 395(b) alongside actions described in Civil Code sections 1812.10 (retail installment sales) and 2984.4 (automobile sales financial act). Both Civil Code sections 1812.10 and 2984.4 which are currently included in the exception to section 395(b) contain rules regarding determining proper venue for actions arising under these sections. Civil Code section 1950.5, which this amendment proposes adding to the exception in 395(b), does not contain any similar guidance on determining venue for claims arising under it. Therefore, the effect of the proposed change would be to remove actions concerning residential security deposits from the general venue rules without adding any specific rules to govern these actions – in effect creating a limbo in terms of venue for these actions.

Additionally, even if the proposed changes were modified to address these drafting concerns, the fundamental principle on which the proposed change rests is flawed. The venue rules in California have been developed with the underlying purpose of ensuring that the defendant in a civil action has a right to have a trial held in a county of his residence or in a county with a logical connection to the underlying transaction. *See Smith v. Smith*, 30 Cal. App. 2d 70, 72 (1938); *Credit Bureau of San Diego, Inc. v. Clark*, 98 Cal. App. 2d 479, 480 (1950). This resolution seeks to undermine the valid historic principles on which venue is based by attempting to create an exception which would allow any landlord to be hauled into court wherever their former tenants may choose to relocate. This in effect places an unfair burden on landlords who will be forced to defend these actions in venues where they have no connection.

Requiring former tenants to bring actions regarding the withholding of security deposits in counties either where the lease was entered or where the landlord resides can hardly be seen as unfair. Former tenants, having resided in the county where the lease was entered, presumably have connections to that county which will facilitate minimizing the expenses associated with bringing an action in a county where the former tenant does not current reside. Additionally, it is the former tenant who has control over where they choose to reside following the termination of the lease. If the former tenant elects to move to a county where jurisdiction against their former landlord is not proper they should not be allowed to claim a great unfairness.

Proponents of the proposed amendment claim that this amendment is necessary to deter landlords from improperly withholding residential security deposits. In reality, what the proposed amendment does is creates a vehicle by which former tenants, by forcing the landlord into an unfair venue, can raise the transactional costs of defending proper withholdings allowed by statute, making it financially impractical for landlords to defend their statutory rights.

## **SAN DIEGO COUNTY BAR ASSOCIATION**

There is a very appropriate purpose for holding landlord/tenant litigation in the jurisdiction in which the unit is located. If the tenant has chosen to move, so be it. There is, however, no legitimate purpose is burdening the landlord with distant litigation when he or she has rented a unit in a specific location.