

# Landlords Win Right to Stop Renting

■ Justices say a property can be taken off the market if residents are annoying. The decision could bring a drop in the number of units.

By Maura Dolan, Times Staff Writer  
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SAN FRANCISCO — A landlord may retaliate against a bothersome tenant by withdrawing from the rental market, the California Supreme Court ruled Monday. In the 4-3 decision, the state high court ruled that landlords may stop renting their property, even if their purpose is to get rid of tenants who annoyed them by asserting legal rights.

“A contrary ruling could permit tenants to force the landlord to remain in business indefinitely,” Justice Marvin R. Baxter wrote for the majority, which said a law favoring landlords trumps another that protects tenants.

The court’s three dissenters complained that the ruling would permit landlords to threaten tenants with eviction “if they complain about the condition of their residences or exercise their rights to make necessary repairs.”

“The majority opinion violates the public policy of this state by encouraging retaliatory eviction,” Justice Carlos R. Moreno wrote for the dissenters.

Monday’s decision is expected to reduce the power of tenant associations in cities where rents are controlled, and eventually may even slice into the number of rental units in those communities.

The case had been before the court for more than two years, one of only a handful of landlord-tenant disputes the state high court has reviewed during the last several decades.

The ruling stemmed from a clash between a San Francisco landlord, Joel Drouet, and his tenant, Jim Broustis.

Broustis had rented from Drouet for more than 10 years when the landlord filed notice that he was removing his two-

unit building in the Mission District from the rental market. Broustis charged that Drouet was retaliating against him and refused to move.

Over the years, the tenant and landlord had wrangled frequently. Broustis and his roommate, Ivy McClelland, alleged that Drouet had illegally attempted to raise rents, overcharged for utilities and refused to pay interest on security deposits.

In April 1999, the tenants discovered that the landlord had not paid his share of a garbage bill and told him that they planned to deduct the amount from their rent. They also asked him to fix a leaking sewage drain and shower wall.

The landlord did not make the repairs, according to the court. Instead, three months later, Drouet filed notice that he was removing his units from the rental market and gave the tenants 60 days to vacate.

The tenants did not move, and the landlord went to court. The tenants prevailed initially in trial court, but lost when Drouet appealed.

In its ruling, the California Supreme Court had to reconcile a state law that allows landlords to withdraw from the rental business with another state law that prohibits retaliatory evictions.

All the landlord must do is demonstrate “a bona fide intent to withdraw the property from the market,” the court said.

If the tenant objects that the landlord is not really getting out of the rental business, the landlord has to show the truth of his intentions. The landlord’s motivations are irrelevant, the court said.

Although tenants’ representatives suggested that landlords might use the decision to get rid of tenants and then later try to rent the same apartments, the court said the law would not protect landlords who tried.

An evicted tenant who doesn’t believe a landlord is leaving the rental business can challenge the landlord’s intent, Baxter said.

“The landlord will then have the burden to establish his or her bona fide intent to withdraw the property from the market by a preponderance of the evidence,” Baxter wrote.

In rent-controlled cities, including Santa Monica, West Hollywood, San Francisco, Oakland and Berkeley, a landlord must offer the apartment to the evicted tenant if the unit is returned to the rental market within 10 years of the tenant’s leaving it, said Andrew M. Zacks, who represented the landlord in the case.

Zacks said it had taken Drouet more than a year to evict his tenants, and he has since sold the building. The tenants are seeking financial compensation for the eviction.

Zacks said Monday’s ruling means the landlord will prevail in that litigation. He called the ruling “a measure of protection for property owners in a very regulated business.”

“It will probably mean less rental property in rent-control jurisdictions, but I think that is rent control’s problem,” Zacks said. “If they didn’t have these local restrictions on them, they probably wouldn’t be using” the law to get out of the housing business.

Daniel Berko, a San Francisco lawyer who represents tenants, called the decision “disgraceful.”

“Tenants are going to be extremely fearful about complaining about conditions to landlords or to governmental agencies, including the police, because the Supreme Court has just given license to landlords to evict tenants who do that,” said Berko, who submitted written arguments on behalf of the tenants in the case, Drouet vs. Superior Court, S096161.

