

2011 MAY 26 PM 1:49


Approved as to Form and Legality

Oakland City Council

RESOLUTION No. 83371 C.M.S.

RESOLUTION SUPPORTING ASSEMBLY BILL 934 THAT WOULD AMEND CIVIL CODE SECTION 47 TO REMOVE EVICTION NOTICES FROM THE LITIGATION PRIVILEGE THEREBY PERMITTING TENANTS TO BRING A LAWSUIT FOR WRONGFUL EVICTION AGAINST A LANDLORD WHO ISSUES A FRAUDULENT OR FALSE EVICTION NOTICE IN A POST-FORECLOSURE EVICTION OR OTHER EVICTION ACTION

WHEREAS, the California Supreme in *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, held that eviction notices issued prior to beginning the eviction litigation were protected by the litigation privilege set out in California Civil Code §47, which protects a person from being sued for communications made during the course of litigation even if such communications are false or even malicious;

WHEREAS, application of the litigation privilege to pre-litigation eviction notices has eliminated the ability of a tenant to bring a wrongful eviction lawsuit when a landlord gives a fraudulent or false eviction notice and the tenant moves; and

WHEREAS, the Oakland City Attorney's Office has seen numerous instances of improper and unlawful eviction notices being issued to tenants of foreclosed properties by lenders who simply want the property vacant for resale notwithstanding the tenant's right under Oakland's Just Cause for Eviction Ordinance to remain a tenant at the premises, such unlawful notices often result in tenants being displaced and foreclosed properties remaining vacant; and

WHEREAS, tenants who fail to leave after receiving a fraudulent or false eviction notice risk having an unlawful detainer filed against them which can become part of the tenant's credit history and make renting more difficult in the future;

WHEREAS, the effectiveness of enforcing eviction laws and Oakland's Just Cause for Eviction Ordinance is severely hampered by the inability of tenants or the City Attorney to take legal action against landlords who abuse the litigation privilege by issuing fraudulent or false eviction notices;

WHEREAS, Assembly Bill 934 would address the problems created by the *Action Apartment* decision by creating an exception to the litigation privilege established by California Civil Code §47, such exception would remove pre-litigation eviction notices from Civil Code §47's litigation privilege;

WHEREAS, Oakland's Housing, Residential Rent and Relocation Board has voted to support Assembly Bill 934 and has asked the City Council to join in that support; now therefore be it

RESOLVED: that the City Council hereby provides that it supports assembly Bill 934 and authorizes the City Administrator to communicate to the California State Legislature the City Council support of the bill.

IN COUNCIL, OAKLAND, CALIFORNIA, **MAY 17 2011**

PASSED BY THE FOLLOWING VOTE:

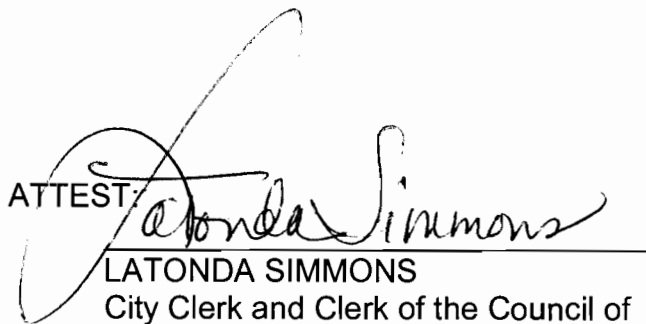
AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
SCHAAF, AND PRESIDENT REID - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:


LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California