

**To:** New Jersey Law Revision Commission  
**From:** Erik Topp  
**Re:** *Baker v. La Pierre, Inc.*  
**Forum selection in Rent Security Deposit Act, N.J.S. 46:8-19 et. seq.**  
**Date:** September 11, 2017

## MEMORANDUM

### Executive Summary

In *Baker v. La Pierre, Inc.*<sup>1</sup> the Appellate Division considered the propriety of forum selection clauses that allow a landlord to lock a tenant into litigation in a county of the landlord's choice under the terms of their lease agreements.

The Court determined that “where a residential tenancy was created by an adhesion contract, and the tenant has filed the action for return of a security deposit, in accordance with *Rule* 6:1-3, in the county where the rental property is located, a forum-selection clause requiring venue be laid in another county is against established legislative policy.”<sup>2</sup>

### Background

The case examined whether a landlord could use a forum selection clause in a rental contract to force a tenant to pursue legal action regarding the return of a security deposit in a county chosen by the landlord.<sup>3</sup> The statutory section provides limited guidance on the matter, stating only that such matters are handled either by the Small Claims or Special Civil divisions of the Superior Court.<sup>4</sup> The relevant portion of the statute states the following:

Notwithstanding any law or rule to the contrary, the Division of Small Claims of the Superior Court, Law Division, Special Civil Part shall have jurisdiction of actions between an owner or lessee and tenant for the return of all or a part of a security deposit in which the amount in dispute, including any applicable penalties, does not exceed the sum of \$5,000, exclusive of costs.<sup>5</sup>

Instead, *Rule* 6:1-3(a) governs forum selection in this context. The Rule includes a “special exception for complaints seeking protection under the Security Deposit Act”<sup>6</sup> and reads as follows:

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<sup>1</sup> *Baker v. La Pierre, Inc.* 2016 N.J. Super. Unpub. LEXIS 472 (App. Div. 2016).

<sup>2</sup> *Id.* at \*9.

<sup>3</sup> *Id.* at \*2.

<sup>4</sup> *Id.* at \*5 (quoting N.J.S. 46:8-21.4).

<sup>5</sup> N.J.S. 46:8-21.4.

<sup>6</sup> *Baker*, 2016 N.J. Super. Unpub. LEXIS 472 at \*5.

Except as otherwise provided by statute, venue in actions in the Special Civil Part and the Small Claims Section shall be laid in the county in which at least one defendant in the action resides. If all defendants are non-residents of this state, venue shall be laid in the county in which the cause of action arose. For purposes of this rule, a business entity shall be deemed to reside in the county in which its registered office is located or in any county in which it is actually doing business. *Except as otherwise provided by statute, venue in landlord and tenant actions shall be laid in the county where the rental premises is located and actions for the recovery of a security deposit may be brought in the county where the property is situated.* If all defendants are non-residents of this state, venue shall be laid in the county in which the cause of action arose.<sup>7</sup>

This, at least in theory, allows tenants to bring actions for the recovery of a security deposit in the county where the property is situated, regardless of the landlord's location. However, when a landlord attempts to alter jurisdiction through a forum selection clause, a tenant may presume that she is unable to avail herself of the Rule's standard.

The parties here had entered into a written lease agreement for a condominium located in Monmouth County, but La Pierre required all legal challenges arising under the lease to be litigated in Ocean County. In its analysis, the Court noted that "landlords generally hold a superior bargaining position over tenants"<sup>8</sup> and that many courts have recognized that the legislative intent of the Security Deposit Act was to "protect tenants from overreaching by landlord[s]."<sup>9</sup>

### **Conclusion**

This may not be a particularly complicated issue, but it seems as though there is a gap in the statute that could have the practical effect of limiting tenants recovery of a security deposits. Tenants may be unwilling to pursue the course of legal action that Baker did here and might instead end up sacrificing their security deposits rather than litigating the issue in an inconvenient jurisdiction. Preliminary research has revealed no other written opinions on this issue, in New Jersey or any other state; this limited judicial and legislative guidance may lead to inconsistent application of the law.

Staff seeks authorization to conduct additional research and outreach to determine whether modifying N.J.S. 46:8-19 *et seq.* to clarify the status of forum selection clauses would aid in interpreting the law and potentially eliminate the need for additional litigation regarding the issue addressed in *Baker v. La Pierre, Inc.*

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<sup>7</sup> Rule 6:1-3(a) (emphasis added).

<sup>8</sup> *Baker*, 2016 N.J. Super. Unpub. LEXIS 472 at \*8.

<sup>9</sup> *Id.* at \*9 (citing *Watson v. Jaffe*, 121 N.J. Super. 213, 214 (App. Div. 1972); *Fisher v. Heck*, 290 N.J. Super. 162, 174 (Law Div. 1996); *Branch Brook Gardens v. Ramirez*, 186 N.J. Super. 241, 244 (Cty. Dist. Ct. 1982)).