The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן תל"ז סעיף א'-ב'

Overview

Siman 437 Seif 1:

If one leases his property for use beginning the 14th and they made a *kinyan* that is effective for renting land – if the key was not transferred by the beginning of the night of the 14th it is the owner's obligation to search for *chometz* but if the key was transferred before the night of the 14th the tenant must search for *chometz*.

- If a *kinyan* was not yet done it is the owner's obligation to search even if the key was given to the future tenant. (M.B. 2)
- Shulchan Aruch follows the opinion that requires both a *kinyan* and the giving of the key to the tenant to obligate him to search but according to Tosafos just the giving of the key obligates the tenant to search and there are Poskim who write that one should be stringent and take into account both opinions. According to all opinions one could search as the agent for the other. (M.B. 2)
- If the house was sold the buyer must search even if the key remains in the possession of the seller. (M.B. 3)
- There is a dispute who must search in a case in which the key was given to the tenant on the 13th and he gave it back to the owner before nightfall. (M.B. 5)
- When the tenant must search he is also obligated to nullify the *chometz* that is there since it became his property. (M.B. 6)

Siman 437 Seif 2:

One who rents property from a friend and does not know whether it was searched for *chometz* – if the owner is in town he should be asked but if he is not in town the assumption is that it was searched and the tenant must only nullify the *chometz*.

- The case refers to where the tenant took possession sometime after a search could have been done. (M.B. 7)
- One may also ask the wife or children of the owner if the property was searched. (M.B. 8)

Halacha Highlight

Searching for chometz in a hotel or hospital room

Shulchan Aruch Siman 437 Seif 1
על השוכר לבדק
It is upon the tenant to search

Shulchan Aruch (סעי' א') writes that someone who rents property by making a proper *kinyan* before the beginning of the night of the 14th is obligated to search that rented property for *chometz*. Sefer Chovas Hadar (סוה"ס בדיני בדיקת חמץ) writes that one who rents a room in a hotel is also considered a tenant for this halacha and is obligated to search his room for *chometz* the night of the 14th and recite the *beracha* on the search as well. Teshuvas Kinyan Torah (ח"א סי' ק"כ) disagrees with the assumption that one who stays in a hotel is the same as one who rents an apartment. In the case of an apartment, the agreement is that the tenant has full rights to this particular property. In contrast, when one rents a room in a hotel the hotel is not obligated to keep the guest in a particular room. If the need were to arise the hotel could have the guest move to another room. As such, the guest is not considered a tenant for the halacha of searching for *chometz*.

Sefer Toras HaYoledes (פרק מ"ג סעי' א') utilizes this same rationale with regard to someone who is in the hospital on the night of the 14th. He rules that the patient should search through his belongings but is not obligated to search his room. His rationale is that even though one pays money for his hospital room, the hospital could decide to move the patient to another room whenever they choose. Furthermore, the money that one pays for their hospital room is for the bed and medical care that is received but it is not considered a rental of the room. In this regard it is even less of a rental than a hotel room because the hospital staff has the right to enter the room when they see fit.

Stories to Share

The Tenant's Argument

ש"ע ס' תל"ז, א' "ואם משמסר לו המפתח חל י"ד על השוכר לבדוק..."

A certain man was renting a Jewish-owned apartment for Pesach. Neither the owner nor the tenant wanted to do bedikah on it, but the owner was determined to get out of the job. He had learned the gemara which is the source of the halachah on today's amud that a renter for Pesach becomes obligated to check if he has receives the key before the time of bedikas chometz.

Although the tenant was slated to move in erev Pesach, the owner gave him the key the day before with full permission to go in early if he so desires. But when he explained that this made the tenant obligated to do the bedikah, the tenant disagreed. "The gemara only says that if you give the tenant **the** key he is obligated to check. But in our case, you have your own key as well, so you didn't give me the key, merely a spare. Since you also have access and I am not acquiring until erev Pesach, you remain obligated to do the bedikah."

When this case was brought to Rav Shlomo Zalman Auerbach, he agreed with the tenant. "Even according to Tosafos that a tenant who receives the key must check even before making a kinyan—which the Mishnah Berurah brings—the tenant need not check in our case. A careful reading of Tosafos shows that the key is the determining factor only because the owner cannot get into the house. Since in this instance the owner also has a key, he can get in and must do the bedikah according to all authorities."

הליכות שלמה, פסח, ע' קט"ו, אות ט"ו ודבר הלכה אות כ"ו