



Overview

Halacha Highlight

Renting an apartment that was supposed to be searched

Shulchan Aruch Siman 437 Seif 3
משכיר בית לחברו בחזקת בדוק

One who rents a house under the presumption that it was searched.

Shulchan Aruch (סעי' ג') addresses one who rents property with the assumption that it was already searched. Mishnah Berurah (ס"ק י"א) writes that the same halacha will apply if the owner told the tenant explicitly that he had done a search. If it turns out that the property was not searched, the halacha is that the tenant must now search for *chometz* on the property and we do not cancel their agreement as a result of this incorrect description. Furthermore, even if this incident occurs in a place where people normally pay others to search for *chometz* and the tenant must now bear the cost of paying someone to search for *chometz*, the lease is not cancelled. The rationale for this ruling is the assumption that people do not mind using their money to fulfill a *mitzvah*.

Mishnah Berurah (ס"ק י"ב) adds the following explanation. Although it is a place that people are paid to search for *chometz*, nevertheless, it is assumed that had the tenant known that the property was not searched he would have gone ahead with the lease since he doesn't mind the added expense to fulfill a *mitzvah*. The fact that he is presently claiming that had he known the property was not searched he would not have completed the lease agreement is ignored. It is assumed that something else happened that caused the tenant to want to back out of the lease agreement and he is using this as an excuse to release him from the lease. Within this explanation there are two novel points. 1) Even though the *chometz* in the house belongs to the owner and he was responsible to search for it, nevertheless, once he did not take care of his responsibility the obligation transfers to the tenant. 2) Although a stipulation of their agreement was not met and usually that is grounds to cancel the transaction, in this case the transaction remains in place since it is assumed that people are willing to forgo this stipulation.

But the tenant refused to pay, claiming it was obviously a מקח טעות.

When this question reached Rav Shlomo Zalman Auerbach he ruled that it was indeed a מקח טעות. He answered, "Tosafos holds that even if the failure to check was revealed before Pesach, it is the owner's duty to do the inspection. The Achronim explain in Tosafos that on the fourteenth no one is doing bedikah and people don't wish to check after the proper time. Although we do not hold like Tosafos in this, we would never say that a person is willing to check just because in general people are willing to do mitzvos themselves!"

הליכות שלמה, ע' קכ"א-קכ"ב, אות כ"א

Siman 437 Seif 3:

If one leases property assuming that it was searched and it turns out that it was not searched, the tenant must search and this does not cancel the transaction, even if it is a place where people pay for their homes to be searched since searching is a *mitzvah*. There are those who maintain that the tenant must be reimbursed for the cost of the search since it was stipulated that the property would be searched.

- ❖ According to Shulchan Aruch the owner is not obligated to reimburse the tenant for the cost of the search. (M.B. 13)
- ❖ Poskim follow the first opinion that the owner is not obligated to reimburse the tenant the cost of the search. (M.B. 15)

Siman 437 Seif 4:

If there is a property that was assumed to have not been searched and someone, even a woman, slave or child claim to have searched the property, their claim is reliable, assuming the child is mature enough to have searched.

- ❖ One may rely upon the claim of the woman, slave or child only if the claim is made before the 6th hour so that he could nullify the *chometz* but after the 6th hour one is obligated to search for *chometz* since one may not nullify *chometz* at that point. (M.B. 16)

Stories to Share

The Disgruntled Tenant

ש"ע ס' תל"ז, ג' "המשכיר בית לחברו בחזקת בדוק ונמצא שאינו בדוק..."

A certain man rented an apartment for Pesach and arrived shortly before the onset of the chag. Everything was as it was supposed to be and he was really enjoying his holiday, until he heard a very unpleasant rumor. He was told that the owner had not done bedikah and that, if he wished to remain in the apartment, he was obligated to check the apartment for *chometz* as soon as possible. When he confronted the owner about this, he admitted that he hadn't done bedikah but claimed he hadn't known this would require the tenant to do bedikah during the festival. The tenant was furious and immediately left the apartment.

After Yom Tov, the owner of the apartment demanded that the renter pay the original amount of rent in full despite his abandonment of the space. The owner claimed, "It is true that I made an error, but you should have done the bedikah yourself. This is clear from the Mishnah Berurah in Siman 437 where we find that one who rents a house before Pesach with the understanding that a bedikah was done and it was not done must do his own bedikah since people don't mind doing mitzvos themselves. Why should our case—when you found out that you were required to do a bedikah during the chag—be any different?"