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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

MIXED MONEY

Shlomo Goodman ran an organization, Mattan B'seiser, that distributed food packages to needy families. To help fund the organization, Mr. Goodman placed pushkes (tzedakah boxes) in many of the local shuls. Once a week, Shlomo would go around and collect the contents of the

pushkes in a container.

He came to the Kehillah Shul. The shul treasurer, Mr. Marx, welcomed him. "Good morning, Shlomo!" he said. "It's good to see you."

"Likewise," replied Shlomo.

"We just put your pushke away in the office," said Mr. Marx. "I'll get it for you."

Mr. Marx came back a minute later. "Here it is," he said. "I'll empty the money into your container."

Mr. Marx put the bills in the container and began transferring the coins. "Are you sure that you have the right pushke?" Mr. Goodman asked. "It looks a little different."

Mr. Marx checked the label on the pushke. "You're right!" he exclaimed. "I confused it with another pushke that looks similar."

Mr. Marx went back to the office to get the correct pushke. When he returned, Mr. Goodman was lost in thought. "Do you know how much money you put in?" he asked Mr. Marx.

"No," replied Mr. Marx. "How much was in your container?"

"I emptied the pushkes from a few other shuls," answered Mr. Goodman. "I have no idea how much money there was."

"I can't say for sure how much I put in," said Mr. Marx. "There was a ten-dollar bill, a few singles, and a lot of quarters. I'd estimate it was \$20-\$30."

"I don't want to take money from the other organization," said Mr. Goodman. "Let me give Rabbi Dayan a call."

He called Rabbi Dayan and explained the situation. "How much should I take out of the container?" he asked. "Harav Yechezkel Landau, author of the Noda BiYehudah, was asked a similar question about 250 years ago," replied Rabbi Dayan. "He writes that you are required to return only what you are certain was mixed in" (Noda BiYehudah, Y.D. 2:155; Pischei Teshuvah, Y.D. 259:13).

"Why is that?" asked Mr. Goodman.

"The Noda BiYehudah compares the amount in question to someone who does not know whether he borrowed, who is not legally liable," replied Rabbi Dayan. "Here, too, aside from the amount that is certain, you don't



BHI HOTLINE

INSOLVENT RENTER

My tenant (Yehudah) hasn't paid his rent for half a year. I informed him that

if he is not up to date by next month, I will have to evict him. Yehudah's friend (Shmuel) heard about his predicament and offered to serve as a guarantor for the coming year until Yehudah can become more financially stable. Although I appreciate Shmuel's gesture, if Yehudah cannot pay the money he owes, I feel that I have the right to evict him.

Q: Do I have the right to evict Yehudah even though I am assured of receiving rent for the coming year?

A: One point that must be emphasized is that if a tenant loses his right to remain in the apartment, it is prohibited for him to remain without the owner's consent (see Rashbam, B.B. 57b and Sma 376:2). That said, we can discuss whether the tenant has lost his right to remain in the apartment.

When Reuven leases an apartment to Shimon for two years, regardless of whether the agreement is oral or recorded, Shimon acquired the right to use the apartment and Reuven may not evict Shimon from the property, even if Reuven needs to live there, e.g., his house became uninhabitable (C.M. 312:1). If there is no lease or the lease expired but Reuven allows Shimon to remain, Shimon's protection from immediate eviction is Chazal's enactment to protect tenants from becoming homeless due to insufficient time (subject to availability of apartments in the area) to find another residence (C.M. 312:5). Therefore, when there is no lease and the owner's residence becomes uninhabitable, he may evict the tenant, since there is no reason the tenant should remain and the owner should be homeless (C.M. 312:11).

When a tenant does not pay his rent and does not have the means to pay

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STORY LINE

know whether anything more was put in" (C.M. 75:9).

"Doesn't the borrower have a moral obligation (chiyuv b'dinei Shamayim) in such a case, though?" asked Mr. Goodman. "Similarly, wouldn't I have a moral obligation for the questionable extra?"

"The borrower has a chiyuv b'dinei Shamayim only if the plaintiff makes a definitive claim that he lent," replied Rabbi Dayan. "Where the lender is also not sure, the borrower does not have even an obligation b'dinei Shamayim. Here, Mr. Marx does not have a definite claim how much he put in" (C.M. 75:10).

"Furthermore," added Rabbi Dayan, "the Noda BiYehudah writes that even if Mr. Marx had a definite claim, you would have no obligation whatsoever beyond what you are certain about, because you never accepted liability for the other money, neither as a borrower nor as a guardian. Similarly, even according to the stringent opinion that when neither the lender nor the borrower remember how much was borrowed, the borrower has a moral obligation to seek an acceptable compromise (C.M. 75:18), you have no obligation to return beyond what you are certain, since you never accepted any responsibility for the money mistakenly put in, nor are you expected to know how much it was." (See, however, Y.D. 259:5 and Erech Shai there.)

"What about Mr. Marx?" asked Mr. Goodman.

"Since the shul agreed to look after the other pushka, he was responsible as a guardian and was careless," replied Rabbi Dayan. "He has a moral obligation to fill in the questionable amount."



MONEY MATTERS

PARTNERSHIP # 23

Joint Areas

Q: I share a hallway with my neighbor in a two-family house. He likes to leave his bike in the hallway, and now wants to install a bike stand. Can I prevent him?

A: Partners are required to use the joint property according to the common custom. Thus they are allowed to leave in the hallway items that partners typically do. Other items cannot be left there unless the other partner gives permission or it is something that he is not particular about (C.M. 161:5; Shach, Y.D. 226:8).

If both partners want to use the area simultaneously and there is not sufficient room for both, such as a one-car driveway, they should take turns. Even if one partner used the area exclusively in the past, the other partner cannot demand to use it now for an equivalent time, but they should divide evenly from now on. If they cannot agree who should use it first, they should draw a lottery (C.M. and Rema 171:8).

Permanent fixtures may not be installed without permission of the other partner (Sma 140:22).



BHI HOTLINE

his rent in the future, the owner may evict him, since the agreement was that the tenant would pay for use of the apartment (Maharit cited in Be'er Heiteiv 312:4). This right may be exercised even in the middle of the lease, even if the tenant will be evicted during the winter and will have difficulty finding another residence (Perach Mateh Aharon 1:42). Nevertheless, according to some authorities, if the landlord is assured that he will be paid rent in the future, e.g., someone else will pay his rent, the owner may not evict him. The allowance to evict a delinquent tenant is not a punishment for not paying past rent; it is because the owner does not have to allow a tenant who will not pay in the future to remain (Paamonei Zahav 312:5). Therefore in your circumstance, since Shmuel will cover Yehudah's rent for the remainder of the lease, you do not have the right to evict Yehudah.

The above summarizes your rights; however, when appropriate, one should strive to go beyond the letter of the law (lifnim mishuras hadin) to assist a struggling tenant. Furthermore, the Imrei Emes of Gur suggests that you have a greater obligation than others to assist since this mitzvah came your way due to the fact that Yehudah is your tenant. He proves this from the Gemara (Gittin 41a), which states that the owner of a half-slave/half-free man is forced to free him so that he may marry and have children, and the slave must reimburse his former master for half his value. Chazal placed this obligation on the master rather than on others, since the master has a pre-existing relationship with the half-slave and thus bears greater responsibility to assist him. Similarly, since Yehudah is your tenant, you bear greater responsibility for him than others (Rosh Golas Ariel, p. 316).

For questions on monetary matters,
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