BS"D, Iyar 6, 5783

April 27, 2023

Case 83012

# Psak Din

In the dispute between

| The Plaintiffs: | The Defendants: |
|---|---|
| Landlords | Tenants |

## Facts that are agreed upon between the two sides

The defendants rented the plaintiff's apartment. The apartment was initially rented for one year, from November 1, 2020 until October 31, 2021. The defendants then extended the lease, with the option for subletting, until July 31, 2022. The defendants completed the move out of the apartment a few days after July 31, although the reason for that is a matter of dispute. The plaintiffs are still holding onto a 7,000 NIS security deposit of the defendants.

## Claims of the Plaintiffs

Cleanliness: The defendants did not leave the apartment in a clean state, as was required by the contract (section 8 of the lease agreement), which states "The Apartment, when vacated by the Tenant, shall be empty of all persons and objects belonging to or connected with the Tenant and, together with the garden, shall be clean, orderly and in the same condition in which the Tenant received it from the Landlord, subject to reasonable wear and tear." Despite the video from August 4, 2022, which purportedly shows that the apartment was left in a clean state, the video did not show much of the apartment, including bathrooms, surfaces, and windows, which were not clean. They are therefore responsible to pay for the cleaning fee and the cost of the cleaning supplies used to clean the apartment after the conclusion of the lease.


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State of the garden: The garden was messy, with a lot of dead growth when the apartment was vacated. The defendants therefore are obligated to pay for the cost of restoring the garden to a clean and orderly state.

Penalty payment: The lease agreement (section 10.02) states that the defendants will be obligated to pay 800 NIS for each day that they fail to vacate the apartment after the end of the lease. The plaintiffs' interpretation is that the apartment will only be considered vacated for these purposes once the apartment was completely empty of the defendants' possessions, relevant repairs were made, and the apartment was thoroughly cleaned. The apartment reached that state of vacancy on August 9th. However, the plaintiffs are willing to forgo payment for Shabbat, and are also willing to forgo the fact that some seforim were left (and, are seemingly still there) by the defendants. Therefore, the defendants are obligated to pay the penalty payment for 8 days.

Painting: Even though there is no explicit clause in the lease regarding the need to paint, the lease does state (section 8) that the apartment should be returned in the condition it was received, subject to reasonable wear and tear, and, since it had been painted soon before the beginning of the lease, it should have been repainted. Furthermore, from the plaintiffs' experience, that is common practice in Israel. Even if the defendants feel that the amount paid was too high, that is not the plaintiffs' fault, since the defendants chose to not arrange the painting and other repairs themselves, but instead left hurriedly without leaving time for arranging those repairs to be made. Therefore, through their inaction, they put these items into the care of the plaintiffs and must therefore reimburse the plaintiffs for what they paid. To clarify, the fee is only for repainting, and not wall repairs, which the plaintiffs paid for themselves.

Compensation: The plaintiffs are also asking for compensation for their time, effort and stress that was involved in making the necessary repairs and other preparations to enable the apartment to be ready to be shown again for rental. This could have been done in a timely fashion had the defendants been more organized and had better communication about when and how they would be vacating the apartment. The defendants did not communicate properly with the plaintiffs' representative, which led to confusion and problems during the tenancy, and also made the defendants' final move very inefficient and difficult. Furthermore, the repairs were being made in this way in order to benefit the defendants, and prevent them from unnecessarily needing to pay additional days of the penalty payment. Finally, the plaintiffs' representative


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needs to be reimbursed for work that he did that was the legal and moral responsibility of the defendants. The value of this section of claim is approximated to be 10,000 NIS.

Miscellaneous repairs: In addition to all of the above, the plaintiffs are also asking for payment for repairs of a broken lock, lost keys, broken window, and replacing the broken water spigot of the washing machine.

The value of all of the plaintiff's claims are as follows:

Cleaning fee 1,680 NIS

Cleaning supplies 154.90 NIS

Cleaning of garden 819 NIS

Penalty payment 6,400 NIS

Painting 7,722 NIS

Compensation for time, effort, and stress 10,000 NIS

Broken lock and lost keys 190 NIS

Broken window 250 NIS

Broken washing machine spigot 300 NIS

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Total: 27,515.90 NIS, minus the 7,000 NIS security deposit=20,515.90 NIS

## Claims of the defendants

Cleanliness: The level of cleanliness that the apartment needed to be at the end of the lease, as described by the lease agreement (section 8), was "clean, orderly and in the same condition in which the Tenant received it from the Landlord, subject to reasonable wear and tear." Firstly, when the apartment was vacated on August 4, it had been cleaned by 2 cleaners on 3 occasions, and the level of cleanliness fit the requirements of the lease, as evidenced by the video shown to the Beit Din and the affidavit sent to the Beit Din. Secondly, even if the apartment was not perfectly clean, that would be acceptable under the lease's terms, which allow for reasonable wear and tear. Thirdly, the apartment required a thorough cleaning when it was received, which is relevant for two reasons. First, it is relevant, since the requirement is that the apartment be returned in the same condition in which it was received, and the apartment was certainly returned in a cleaner state. Second, the initial cleaning



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required many hours of work and also payment to a cleaner, for which the defendants weren't reimbursed, although they were told, by the plaintiff's representative, that they would receive some reimbursement. Therefore, even if the defendants would theoretically be obligated to pay something for cleaning, that obligation should be offset by what the plaintiffs owe the defendants for the cost of the initial cleaning. Regarding the cost of the cleaning supplies, the defendants' arguments for why the apartment did not require additional cleaning, are also relevant to why they should not be responsible to pay for the cleaning supplies. In addition to those arguments, the defendants also argue that the amount is excessively high, and, in addition, the plaintiffs took possession of cleaning supplies that the defendants left behind, and there was no need to buy new supplies.

Garden: The defendant had been told by the plaintiff to not worry about the dying overgrowth in the garden, since it was Shemitta, and therefore they had no responsibility to clean the garden. Furthermore, there is nothing in the lease that obligates the defendants to tend to the garden, and it is therefore not their responsibility.

Penalty payment: The defendants were told by the plaintiffs' representative that they would be given a three day grace period after the end of the lease before they would begin to be obligated in the 800 NIS daily penalty payment. Therefore, the requirement to pay can only theoretically begin from August 4. In addition, the apartment was clean by the end of August 4, so, at most, the defendants would be required to pay for one day. However, the only reason why the defendants had not completely vacated the apartment by the end of August 3 was due to the actions of the plaintiffs' representative. An initial move had been scheduled for July 31, however, the plaintiffs' representative took the keys from the tenant on July 31, before the end of the lease (which was a breach of contract), and therefore the mover had to be cancelled, since there was no way to let him into the apartment. Had that mover come, the mover on August 3 would have been able to remove all of the items on that day.

Painting: The lease does not mention anything about a requirement to paint. Furthermore, even though the plaintiffs claim that that is what is common in Israel, from the defendants' experience, that is not true, and painting is often not required.

Damages: regarding the issues that were raised by the plaintiffs (such as the broken lock, window etc.), no evidence of this damage has been presented to the defendants.



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## Counterclaims of the defendants

Reimbursement for inability to use the basement: The basement was unlivable due to the moisture and accompanying smell. This problem was explicitly communicated to the plaintiffs as being a serious matter of concern when the second lease was being negotiated in August 2021, and was raised many other times, including in an email to the plaintiffs' representative in October 2021. This issue was never resolved, even though the plaintiffs admitted that, after regaining occupancy of the apartment, the plaintiffs' electrician discovered that a water pump had failed, which led to the moisture in the air in the basement, something which could have been discovered while the defendants' tenancy was ongoing had the plaintiffs dealt with the issue properly. This is a breach of the lease agreement that states that repairs reported by the tenant will be executed in a reasonable and timely manner. Therefore, the defendants should get reimbursed for the inability to use the basement as a living space. Strictly speaking the defendants claim that, since "the downstairs is approximately 10% of the apartment so on a very conservative estimate, we should be refunded at least 700 shekel per month, which over the period comes to over NIS 11-12,000 shekel that we should be reimbursed plus all of the damage to our goods that was caused." However, the defendants are claiming only 10,000 NIS, or a different amount that the Beit Din sees fit, for the lack of usage of the basement and payment for the defendant's property in the basement that sustained water damage.

In addition to the 10,000 NIS above, the defendants are claiming that the plaintiffs return the 7,000 NIS security deposit, for a total of 17,000 NIS.

## Plaintiffs' response to the defendants' claims and counterclaims

Cleaning: Even though the defendants claim that the apartment was not clean when it was received, that claim should be rejected for two reasons. Firstly, the apartment was cleaned thoroughly twice before the defendants arrived, and it therefore was clean. Secondly, even if the defendants believe their claim that it wasn't clean, that is irrelevant, as they signed on the lease, which states (section 2.03) that they inspected the apartment, and found it to be in good order and repair. Therefore, they legally admitted that the apartment was clean, and are required to return it to a clean state, which they did not do.

Garden: It is true that the defendant had been told that she did not need to replant anything that died during Shemitta, but she was not told that she did not need to leave

the garden in a clean and orderly state, which seemingly could be done during Shemitta.

Penalty payment: The plaintiffs admit that their representative offered the defendants a three-day grace period for which they would not have to pay the 800 NIS daily penalty. However, the intention of a grace period is (quoting from Wikipedia) "a period immediately after the deadline for an obligation during which a late fee, or other action that would have been taken as a result of failing to meet the deadline, is waived provided that the obligation is satisfied during the grace period." Meaning, if the defendants would have moved out within the three-day period, they would not have had to pay any penalty. However, they did not move out within those three days, since the defendants' furniture (besides the seforim) was not cleared away until August 4th. Furthermore, the necessary repairs, which were needed to be done before the defendants' tenancy can be considered to have ended, were not completed until August 9th. The defendants are therefore responsible to pay for the entire period (although the plaintiffs deducted a day for Shabbat).

Basement: Many measures were taken to ensure that the basement would not have moisture problems. These measures were effective, and the plaintiff himself used the basement as an office without issue for 13 years. The plaintiffs admit that the defendants did have issues with the moisture in the basement, however, whenever that was communicated to the plaintiffs, they sent a plumber to deal with the issue. If the defendants had subsequent issues that were not reported to the plaintiffs, that does not merit compensation. Furthermore, the defendants were consistently interested in staying longer in the apartment, and subleasing the apartment to people they knew, and even praised the plaintiffs for their proper behavior over the course of the lease. This seems inconsistent with the claim that the plaintiffs failed to take care of basic and serious issues with the apartment.

Miscellaneous repairs: The plaintiffs provided receipts for several of the repairs (the lock, keys and washing machine spigot, in addition to several other receipts for items not in this section).

Security deposit: The plaintiffs agree that they are holding the defendants' security deposit, and that that amount (7,000 NIS) will be deducted from the final amount that the defendants must pay.


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## Halachic analysis of the issues of the case:

## Cleanliness

The video and affidavit presented to the Beit Din by the defendants show that the apartment was in a good general state of cleanliness. The plaintiffs seemingly also agree that the apartment was relatively clean, but their claim is that the apartment was not thoroughly clean, as, according to their claim, the bathrooms weren't cleaned well, windows weren't wiped down, drawers weren't wiped out etc. The defendants did not give a point by point response regarding the level of cleanliness of the areas that the plaintiffs claimed were not cleaned properly, but they claimed in general that it was sufficiently clean. Beit Din is of the opinion that, unless the agreement between the sides states otherwise, the apartment is not required to be thoroughly scrubbed and cleaned to a professionally clean level, but is sufficient for the apartment to be in a good general state of cleanliness. In this situation, the lease agreement states "The Apartment, when vacated by the Tenant, shall be empty of all persons and objects belonging to or connected with the Tenant and, together with the garden, shall be clean, orderly and in the same condition in which the Tenant received it from the Landlord, subject to reasonable wear and tear." The plaintiffs claim that the apartment, when it was first delivered to the defendants, had been thoroughly cleaned to a degree greater than the cleanliness of when it was returned, or at least, legally, that is what the defendants agreed to when they signed on the lease, which states: "The Tenant hereby declares and confirms that he has inspected the Apartment himself or by his representative and found same to be in good order and repair and suitable for the needs of the Tenant." Beit Din does not believe that this statement should be viewed as an admission that the apartment was thoroughly cleaned at the time of delivery, but instead, should be understood to mean that the apartment was generally speaking in good condition. Furthermore, the defendants provided an email where they stated to the plaintiffs' representative that the apartment required serious cleaning at delivery. Therefore, both due to the fact that, based on the evidence provided to the Beit Din, the apartment appears to have been adequately clean at the end of the lease, and together with the argument that the defendants were not obligated to clean the apartment more than the state of the apartment at the time of its return on August 4, 2021, the Beit Din believes they should not be obligated for the cost of additional cleaning.


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## State of the garden

Both the plaintiffs and defendants admit that the plaintiff said something to the defendant regarding the defendants' lack of responsibility to maintain the garden due to Shemitta, however, they disagree about the extent of what the defendants were exempted from. According to the defendants, the plaintiff exempted the defendants from doing any upkeep in the garden, while the plaintiff claimed that he only exempted the defendants from replanting dead plants, but not from any upkeep that could be done during Shemitta. Beit Din rules that, since the lease states that, when vacated, the apartment "together with the garden, shall be clean, orderly and in the same condition in which the Tenant received it from the Landlord," the presumption is that the defendants are obligated to return the garden in a clean and orderly manner, and when there is a doubt about how extensive the plaintiff's exemption was, the default is that he is believed and the defendants are obligated[1]. It should also be noted that the plaintiff and his representative mentioned the need to clean the garden before vacating several times, in the emails provided to the Beit Din. Generally speaking, there are many actions that could be done during Shemitta to ensure that a garden is clean and orderly, and the plaintiffs described the work that was done by the gardener as trimming overgrown bushes and cleaning out dead plant materials. Those are actions that could potentially be done in a permitted manner during Shemitta, and the defendants must therefore reimburse the plaintiffs for that work.

## Penalty payment

Both the plaintiffs and defendants agree that the plaintiffs' representative offered the defendants a three-day grace period, during which the defendants would avoid incurring the penalty payment. However, according to the representative's explanation, the intention was that this grace period was relevant only if the defendants would have moved out within those three days. However, since they did not move out within those three days, the grace period offer is void, and they are obligated to pay for the entire period, including those first three days. The plaintiffs suggested that this is the accepted definition of a grace period. The defendants disagree, and argue that the grace period offer exempts them from paying for the first three days, even though they did not complete their move until the fourth day. On this point, the Beit Din is of

[1] See a similar idea in Choshen Mishpat siman 82 sif 12. See also the Shach there sif katan 27.



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the opinion that, theoretically, a plaintiff (or his representative) who is clearly owed money, and then offers an ambiguous exemption, should be believed to explain the intention of his exemption.[2] Therefore, the defendants should potentially be obligated in the entire period. However, the Beit Din is of the opinion that this is not relevant in this case. The defendants argued that the only reason why they were not able to move out within those three days was due to the fact that the plaintiff's representative took the key from them on July 31, and they therefore were unable to arrange the initial move that day. Beit Din does not accept that argument. Firstly, from what was presented to the Beit Din, the grace period offer appears to have been presented with the understanding that the defendants would move out within three days even though they no longer had the key. Secondly, the plaintiffs' representative wrote on August 2 that he disagreed with the defendants and claimed that the movers' inability to come was not due to a lack of access. However, even though the Beit Din does not believe that the fact that the defendants didn't have the key should make it as if they moved out within the three-day grace period, however, that fact is still very relevant to the issue of the defendant's obligation to pay the 800 NIS daily penalty, as will be explained.

The Beit Din's opinion is that it is not reasonable to charge the defendants 800 NIS a day after the completion of the lease if the key was taken back by the plaintiffs, and the defendants no longer had the ability to enter and exit the apartment on their own. The plaintiffs wrote the following in their summary of their claims regarding their justification in taking the keys from the defendants' tenant on July 31: *"There was a claim of being locked out of the apartment because we changed the locks after his tenancy was completed. What happened was that we sent him many reminders during the last month (July 2022) of his tenancy about the need to vacate the apartment according to the contract. (see Appendix July 2022.) None of his responses explained how he was intending to return vacant possession by the end of his tenancy. Thus we encountered on August 1 an apartment full of his furniture and possessions. What were we to do? We did not have a clear accounting of where the existing keys were from [*Tenant*]. So we changed the locks and controlled access mainly to protect [*Tenant*]'s possessions that were left in the apartment after his tenancy ended."* The plaintiffs

[2] See a similar notion in Choshen Mishpat siman 65 sif 23 in the Rema regarding someone who forgave one of the borrowers' debts, for which only the smallest debt will be forgiven.


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write that the defendants' tenancy had completed by August 1, and that gave them the right to take the keys. The lease states "in the event that the Tenant does not vacate the Apartment upon termination of this Lease as specified above, the Tenant will pay the Landlord a sum of NIS 800 for each day's delay in returning the vacant possession of the Apartment to the Landlord…" Beit Din believes that the clause in the lease is relevant to tenants who continued to live in the apartment. In this case though, where the key was taken, and their tenancy had ended, the Beit Din does not believe that they should be obligated in this 800 NIS daily fee. Beit Din agrees with the plaintiffs' claim that the defendants had a responsibility to remove all of their items by the end of the lease, which they did not do, but the Beit Din disagrees that the condition of the penalty payment should be relevant in this case. Instead, Beit Din believes that the defendants should pay the regular rental fee relative to the number of days that their items remained in the apartment. Beit Din rules that the defendants should pay 968 NIS for 4 days[3]. Beit Din does not see a legal or halachic reason for why the defendants should be obligated to pay after their items were removed from the apartment, as the plaintiffs argued. Even though cleaning, painting and other repairs might have been needed to be done in the apartment, in order to prepare it for new tenants, the defendants are not obligated to pay for those days.

## Painting

Beit Din accepts the defendants' position that they are exempt from painting. There is no mention in the lease of an obligation to paint, and the Beit Din does not accept the plaintiffs' argument that returning the apartment in the same condition, minus reasonable wear and tear, would imply that the apartment should be repainted, since it had been painted soon before the beginning of the lease. The Beit Din also does not believe that the custom is to obligate a renter to paint, unless there was an explicit agreement to do so.

## Compensation

The Beit Din rejects the claim that the defendants have a financial obligation to pay the plaintiffs for their time, effort and stress incurred in dealing with the defendants, particularly towards the end of their tenancy. The Beit Din does not reject that the

[3] The monthly rental fee is 7,500 NIS. August has 31 days, so the daily fee is 241.94 NIS, *4 days=967.76, which we rounded to 968 NIS.


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defendants could have more clearly or directly discussed their plans with the plaintiffs or their representative, but the Beit Din does not believe that there was any damage caused to the plaintiffs that was direct enough to obligate the defendants.

## Miscellaneous repairs

The plaintiffs made claims on the repair of three items: 1) The broken lock and lost keys. 2) The broken window. 3) The broken washing machine spigot. No receipt or other evidence was provided for the broken window repair, and, without any evidence, the defendants can't be obligated to pay. Regarding the broken lock and lost keys, the receipts were seemingly provided in the plaintiffs' summary, although those receipts were mistakenly mislabeled as being cleaning supplies. However, those receipts appear to all be for copies of keys, and there does not appear to be one for a broken lock. Furthermore, the top receipt of 60 NIS appears to be from November, months after the defendants vacated. Regarding the receipt for the washing machine spigot, it is problematic for two reasons. First, because the date does not correspond to the time when the defendants vacated the apartment: It is not clear which year the receipt is from, as the last digit is unclear. It is definitely from 2020-2022, however, the date of 23/6 also doesn't seem to correspond to the proper time according to the plaintiffs' claim, since, on 23/6/2022, the defendants were still in possession of the apartment. Second, the amount on the receipt 520, does not correspond to the 300 NIS that the plaintiffs claimed for the repair. Due to the lack of sufficient evidence, the Beit Din does not award the plaintiffs anything for damages.

Amounts awarded to the plaintiffs:

Cleaning of garden 819 NIS

Penalty payment 968 NIS

Total: 1,787 NIS

## Counterclaims of the defendants

Reimbursement for the inability to use the basement: The Beit Din understands the claims of the defendants, and appreciates that, if a significant portion of a rented apartment is not suitable for use, then the tenants could potentially have a claim against the owners. In this case, however, the Beit Din believes that the defendants would not be entitled to reimbursement, as we will explain. The defendants were initially in the apartment themselves for ten months, and they later sublet the apartment. At the end

of the period when the defendants themselves were in the apartment, they were negotiating the terms of the extension of the lease with the plaintiffs. At that time the defendants stressed the importance of repairing the moisture in the basement, and expressed their concern that the basement might not be useable if there would be heavy rain. The defendants used that fact as a reason for why they did not feel that a significant jump in the rental fee (the plaintiffs wanted to raise the rent by 15%) was fair. However, the defendants did not make a claim for reimbursement at that time, and it would seem that their behavior showed that they forgave the plaintiffs for any possible claim in this regard at this point[4], and instead used the issue as leverage for not raising the rent as much as the plaintiffs were interested in.[5] Regarding the period when the defendants were subletting the apartment, the Beit Din believes that, unless the defendants claim that they were unable to sublet the apartment, or had to charge less, due to the moisture, the defendants themselves were not actually personally harmed by the water damage, and therefore do not have a basis for a claim to be reimbursed for damages.

Regarding the defendants claim to have their security deposit returned, their claim is accepted, and they are entitled to have it returned, minus the money they owe the plaintiffs.

[4] For example, at that time the defendants wrote "I'm including comments below on the relevant points, as discussed with XXX earlier, who asked me to sum up our conversation before Shabbat. If no comment, it means we're fine with it. I look forward to finalizing everything shortly. As discussed, we've enjoyed living in the apartment, especially as we know we're dealing with mensches." They also wrote: "We've been very good sports about it, cleaning up after each rainfall (the downstairs took us hours to clean and air out in the previous flooding, where there was a lot of accumulated water on the floor, and there was a mildewy smell for weeks, causing us to have run the fan for many days as there's no other ventilation). We had suggested a 5% raise which we believe is fair during a pandemic, i.e. 7350/month." For areas where one can imply that someone forgave a debt due to the fact that he didn't make a claim at a time that one would have expected, see Shut Chatam Sofer Chelek 5, Choshen Mishpat siman 119. See also Rema siman 333 sif 5 quoting from Rosh.

[5] The plaintiffs were interested in raising the monthly rent from 7,000NIS to 8,000NIS, while the defendants were interested in raising the rent to only 7,350NIS. In the end, the rent was raised to 7,500NIS, closer to what the defendants were asking for then what the plaintiffs were asking for.


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## Decisions

1. The plaintiffs should return the balance of the security deposit (7,000 NIS), minus the amount owed to them by the defendants (1,787 NIS), which is 5,213 NIS.
2. **Therefore, the plaintiffs should pay The the defendants 5,213 NIS within 35 days from the date of this decision**.
3. The sides have the right to appeal this decision within 30 days of the date of this decision

This Psak Din is being given on the six of Iyar, 5783, April 27th, 2023

| Rav Daniel Lunzer, | Rav Daniel Rosenfeld, | Rav Benaya Mintzer, |
|---|---|---|
| Dayan | Av Beit Din | Dayan |


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