BS"D, 19 Menachem Av, 5776

August 23, 2016

תיק 76095

Psak Din

In the claim between:

The Plaintiff:

Mrs ada (below, "the plaintiff")

The Defendant:

Mr caspi, (below, "the defendants").

[Mrs caspi. participated in the hearing as a defendant and will thus be described as one of the defendants. However, she is not included in the arbitration agreement or signed on the contract, and thus she is not a legal party to the litigation and the ruling.]

A. Facts that are agreed upon by the two sides:

In December, 2011, the plaintiff rented her apartment to the defendants. Initially, there was a written rental contract for a term of six months. After the initial six months, the defendants continued to rent the apartment from the plaintiff, without a written contract, for several years. The rental amount was originally 1,700 shekels a month, and that was later increased to 1,900 shekels a month.

On March 18, 2016 the plaintiff informed the defendants that she wants them to move out by May 5, 2016. Soon after March 18, the two sides met and the defendants expressed their concerns about finding a new apartment, especially in light of the fact that they would be in England from April 18 through May 11, and the plaintiff requested of them to look for a new apartment, but that they would not be forced to leave if they did not find one. After that discussion, on March 22, the defendants informed the plaintiff via email that they found a new apartment that they would be renting starting April 1. After moving out of the apartment, and with the claim that there were no damages to pay for, the defendants cancelled the security check, which they had given the plaintiff upon moving in.

Main Office: 2 Brurya St. P.O.B 8178 Jerusalem 91080 משרד ראשי: רח' ברוריה 2, ת.ד. 8178 ירושלים
beitdin@eretzhemdah.org www.eretzhemdah.org Fax 02-5379626 פקס Tel 02-5371485 טל'
ע"ר מס' 580120780
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The plaintiff made demands of the defendants to pay additional rent and for various damages, which the defendants claimed they did not owe. At the Din Torah, the defendants admitted that they owe money for electricity and water, and they gave a check in the sum of 590 shekels to the plaintiff.

The plaintiff had asked to bring the case to a local beit din, but, after the defendants expressed that they were uncomfortable with that, both sides agreed to bring the case before the Beit Din of Eretz Hemdah in Yerushalayim.

B. Claims of the Plaintiff:

1) The defendants were neglectful in not returning to the frame, a window screen that was blown out by the wind. The screen was subsequently lost. The defendants should pay 200 shekels for the screen.

2) The defendants caused 500 shekels of damage to the marble flooring (cracked and scratched tiles) and should pay for it.

3) The bathroom door handle/lock mechanism was changed, without permission, while the defendants were living there. It was originally an American mechanism, which cost approximately 300 shekels, and they replaced it with a cheaper mechanism. The defendants should pay 300 shekels, the value of the original mechanism.

4) The defendants were negligent in not reporting water leakage from the bathroom sink into the attached wooden cabinet, and the water ended up causing damage. The defendants should pay 2,000 shekels, the approximate cost of the cabinet.

5) The defendants caused damage to the bottom of a piece of bedroom furniture, and need to pay to have it repaired.

6) The defendants made many holes in the walls, most of which they patched up afterward, but the walls still need to be painted to look nice. Since the defendants committed to returning the apartment properly painted, they should pay for the painting job, 2,000 shekels.

7) There was an agreement made by both sides to give at least 45 days' notice, and ideally 2 months notice, before moving out. The defendants need to pay the balance of that amount of rent, at least for the month of April (1,900 shekels), but more if the halacha allows it.

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8) The defendants should not have cancelled the security check, which could have been used to pay for some of the damages above.

C. Claims of the defendants:

In general, regarding claims of damage to the items in the apartment, often regular wear and tear can causes damage, and the plaintiff should have put aside some of their rental payments to cover such minor damages as she is claiming.

1) The screen was very mangled when it was blown out of the window during a terrible wind storm, which also broke the window pane. It could not have been put back into place without being fixed first. The plaintiff was negligent in not fixing it, and its present whereabouts, which the defendants do not know, are not their responsibility.

2) The cracked tile of the marble floors were there before they moved in. Regarding scratches on the tiles, the defendants don't think they caused the scratches, but, even if they did, it is included in normal wear and tear.

3) The defendants did not change the door/lock mechanism in the bathroom, which they left as it was when they moved in.

4) The defendants reported the leaking bathroom faucet many times over the course of the rental, but the plaintiff did nothing to fix it until the damage had already occurred. Additionally, the damage is much more minor than the description of the plaintiff. Some of the wood and formica needs to be replaced, but not the entire cabinet.

5) The defendants did not damage the bottom of the piece of bedroom furniture. If they did, it is wear and tear and is minor.

6) Since the apartment was not freshly painted when they moved in, they should not be responsible to paint it now. Even if they are responsible for having the apartment painted, 2,000 shekels is too high a price.

7) The plaintiff's request for them to give 45 days-2 months warning prior to move out seems to have been the result of her knowledge of the situation surrounding her marriage, which they were unaware of at that time. The commitment to give 45 days-2 months warning was made under false pretenses, and if they would have known the true situation, they might have found a different rental earlier. Since the plaintiff made the condition of giving 45 days-2 months warning when they were already living in the

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apartment for a long time, they felt forced into accepting that condition and did not do so willingly. Since the plaintiff initiated the request for them to leave the apartment more or less in the very short term, they should not have to give a warning or pay for not giving sufficient warning in carrying out her own request that they leave. Since they had told the plaintiff much earlier about their trip to England, she could not have reasonably expected them to move out on May 5, when they were not going to be in the country. During the conversation with the plaintiff between March 18-22, they stressed that moving out on May 5 would not be possible due to their being out of the country and the defendant's subsequent surgery, and while the plaintiff did say that she would be flexible and not throw them out of the apartment, she also did not indicate that there would be a problem if they moved out earlier.

8) The defendants only cancelled the security check after moving out of the apartment, and after requests for its return. After the plaintiff did not return it and did not (at that point) make any claims for damages, the defendants cancelled the check.

D. **Halachic analysis of the issues of the case:**

1) **<u>Rent for Early Departure</u>**

The standard halacha is that when there is no set time for the end of the rental (as in this case), then each side has to provide the other side with 30 days' notice (Shulchan Aruch, Choshen Mishpat 312:6-7). In this case, the plaintiff provided significantly more than 30 days, but the defendants provided only 10 days (March 22-Apr. 1). Under such circumstances, they would ostensibly have to pay for the remaining time until 30 days were complete (Apr. 21).

Each side argued that a different amount of time should be provided. The plaintiff argued that she had made an oral agreement with them that each side would have to provide a month and a half or two months' notice. However, any such condition is of limited impact for several reasons. By leaving the amount of time open, it is hard to turn it into a binding agreement. The plaintiff herself, when asked whether she thought it was legally binding on her, said she was not sure (transcript, p. 2-3). This is strengthened by the fact that, by her own admission, the plaintiff did not want to have a written contract, which she found was too obligating. Furthermore, a verbal agreement of this kind, should be viewed as a moral commitment, and not a hard set legal obligation (see Mishpetei Shaul #47, paragraph beginning "אולם צריכים אנו לקבוע"). One of the dayanim disagreed in principle, based on the concept that an oral commitment upon which the

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recipient of the commitment relied, is grounds for payment (see Rama, Choshen Mishpat 14:5). However, that dayan agreed with the final amount decided for this element. We will soon deal with the defendants' level of responsibility on a moral level. To summarize, our starting point is that the defendants had an obligation to give a 30 day warning, and a moral responsibility to give more, if possible.

The defendants claimed that they should not be bound by the requirement to inform thirty days in advance, because their need to find an alternative was actually initiated by the plaintiff, who chose a time that was convenient for her. While this logic is not without merit and plays some role in the compromise ruling on this matter, we have not found such a distinction in the sources. In fact, Pitchei Choshen (Sechirut, Perek 5, footnote 37) assumes that the thirty day requirement is true even when the other side initiated the end of the rental, and this was also the assumption of a different panel of our Beit Din (case #75020). Let us remember that the plaintiff's setting of a date was totally legal and moral (in theory, as we will soon discuss), and so it was not significantly different from the case where there was a set date from the outset and the defendants wanted to move it up, in which case they would be required to give a 30 day warning. It turns out then that the plaintiff did not have "all the cards in her hand," since she had proposed May 5, and they could have countered with the date of April 22. Additionally, she had made clear to them that even May 5 was not an absolute deadline.

The main problem with the plaintiff's choice of a date for the defendants to leave is that it was at a time that was untenable for the defendants, given their trip abroad, which was to be from Apr. 18 – May 11. The question then is, what the plaintiff's realistic intentions were in regard to the best back-up plan. The plaintiff said (page 10 of the hearing transcript) that there was no explicit discussion of whether it was better for the defendants to leave significantly earlier than May 5th, or to turn down such a possibility, which could result in a significantly (perhaps even months) later exit date. The "tea-meeting" conversation between the parties which was recorded by the defendants and not disputed by the plaintiffs, ended with the plaintiff's request that they try to find a place, and that they should be in touch. In fact, earlier in that conversation, the plaintiff said:

"Maybe something will open up, and I'll just, you know, try to work with you on the timing."

The impression being that the plaintiff considered the possibility that the defendants would be leaving before their trip. It does not seem to the Beit Din that the defendants

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bear a moral responsibility to pay for the time after leaving for their trip, as this possibility was initiated and encouraged by the plaintiff.

The email of March 22 from the defendants, which was the next morning, is written with an air of assumption that the plaintiff would be happy that they found an apartment. It was not clear whether the defendants already felt committed to the new apartment. They assert that they did not sign a new contract before April 1st, and given the relationship between the parties and the new landlord, it does not seem that the latter would have threatened the defendants with any consequences if they would have told her that they could not take the apartment as of April 1st, but would rather need to push off the start date a little, in order to be able to commit to her.

Regarding the defendants requirement to give a 30 day warning before moving, or to pay rent for that time if no warning was given, there are a few factors that mitigate their responsibility. Firstly, as was already mentioned, the motivation for the defendants to find a new apartment was initiated and encouraged by the plaintiff. The defendants, in their meeting with the plaintiff, expressed the difficulty of finding a new suitable apartment in such short time (in the rental market at that time), and the plaintiff still encouraged them to look and see what they could find. Secondly, as mentioned, it would not have been reasonable for the defendant to leave the apartment in the day or two before their trip to England, which was Apr. 18th, and thus obligating them for a full 30 days does not seem fair or logical.

Finally, after the defendants informed the plaintiff that they accepted a new apartment, the plaintiff, according to all accounts, expressed some degree of disappointment and frustration that the defendants would be leaving so soon, but there is no record that she expressed that the defendants would have to pay her for the time after they leave. Let us now analyze the evidence we have on this point.

It seems most logical that the plaintiff did not tell them clearly that she would demand rent until the end of April even if they would leave on April 1st and that she would prefer for them to turn down the new apartment and take a chance on finding one at a later date. We now put into perspective the following exchange from the Beit Din hearing:

> Rabbi Mann: On March 18 you sent an email and they responded on March 22 that they found a new apartment. How did you respond to the email from March 22?

Main Office: 2 Brurya St. P.O.B 8178 Jerusalem 91080 **משרד ראשי:** רח' ברוריה 2, ת.ד. 8178 ירושלים
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Mrs. Ada: I have the response at home, but, I basically wrote that according to our agreement and to my lawyer, what they did was not acceptable. I sent that response, I would guess, within 3 days.

Rabbi Mann: **We would like to see that email.** (To the Caspis): When did you sign the new contract?

Mr. Caspi: The first of April, at least that's when it was dated, it was a little after, although we agreed to take it earlier.

Rabbi Mann: Did Ada communicate that she was unhappy about you taking the new apartment.

Mr. Caspi: Not that I am aware of. I thought she would be happy for us, but she said something like I don't know if that's okay, but not more than that.

The plaintiff presented a different version. She sent them an email stating that legally they had no right to do that, as confirmed by the lawyer, and that this was probably sent within 3 days. According to this, she had protested, and if the defendants wanted to take their chances on the plaintiff giving in or finding another renter in the meantime, in which case, they should be left off the hook, that was a risk they took.

However, the plaintiff's version, as presented in Beit Din, does not stand. On July 24, the plaintiff faxed to Beit Din a text of an email which, she indicated with a handwritten message, was a response to the defendants' email of March 22 email, which appeared on the page. The clear implication was that this was the email that she had referred to in Beit Din. Beit din was bothered by the fact that the page sent seemed to be missing things that would be expected on an email response, and sent to the litigants an inquiry addressed to the plaintiff. The next day, the plaintiff responded:

> PLEASE NOTE THAT EVEN THOUGH THIS EMAIL DID NOT GET SENT, IT SHOWS THAT I REMIND HIM THAT WE HAD A PHONE CONVERSATION ABOUT THIS; this helped me to remember that our phone conversation had to be around the same time. AS you can see I MAKE EVERY EFFORT TO STICK TO THE TRUTH and I hope that this will be seen in the eyes of the Bet-Din.

When a litigant makes a claim of evidence and fails to bring it, this causes the veracity of the matter to be questioned, all the more so when it is presented as evidence and then the litigant is forced to admit that it does not indicate what it is supposed to. For the

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purposes of our din Torah, it makes little difference whether the mistake was intentional or out of confusion or lack of exact memory.

Furthermore, the full content of the message, which refers to the defendants' request to receive their deposit check back and the reference to the need to check the apartment for damages and add up the bills, strongly indicates that this was sent, and the phone conversation referred to took place, **after the defendants already moved out**. This makes it likely that the conversation about actually charging for rent for April took place in the same phone conversation as the matter of paying for any damages and the return of the deposit check – after they left the apartment.

> As per our phone conversation the law stands behind me according to my lawyer and you are obligated to give 30 days notice before vacating the apartment. You expected so much from me and I was more vacating the apartment. You expected so much from me and I was more than generous in all my offers not to make you leave when it would be too difficult even at my expense and yet you continue to show nothing of the same/ I will add up your bills but I will not as yet promise any return of your deposit check until I see the condition of the apartment and speak to my lawyer. I will not hesitale to proceed legallt if necessary and I was told that the expenses are usually pinnes to the renters. I strongly suggest that you think carefully before startins this battle. If it begins I intend to go full force and strongly sa my lawar suggests… and ho will not be so merciful.
>
> On Tuesday, march 22 2016 6:59am, mr. caspi
>
> (response to) hi mrs.
>
> First of all, thank you for inviting us up -- yesterday…

In a later post-hearing communication by the plaintiff on July 28, she writes:

I DO HOWEVER, HAVE ABSOLUTE CLARITY AND MEMORY THAT I SPOKE TO MR. CASPI IMMEDIATELY AFTER HE INFORMED ME OF THEIR PLANS TO LEAVE EARLY AND THIS, I WOULD SWEAR ON A SEFER TORAH...at which time I TOLD HIM THAT LEAVING EARLY WOULD CAUSE ME BIG PROBLEMS AND WAS NOT WITHIN OUR VERBAL AGREEMENT.

We point out that this account is not very different from that which the defendants reported from the outset and is quite different from the contents of the email that we

Main Office: 2 Brurya St. P.O.B 8178 Jerusalem 91080 **משרד ראשי:** רח' ברוריה 2, ת.ד. 8178 ירושלים
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now know was not sent. "Cause me big problems" means that she is not happy about it but does not necessarily mean that she plans to charge them for rent or demands that they not sign a contract for the new apartment.

On the other hand, the defendants agree that some lack of satisfaction was raised and we do not know exactly what language was used. They did not claim that they requested or received official permission to leave when they planned, which they did not think they required. Nor did they claim that the plaintiff ever said explicitly that if they leave early they will **not have to pay**. The level of explicit relinquishing of rights that is needed appears to depend on the nature of the obligation to give 30 days' notice. According to a minority opinion, it is a matter of obligation for indirect damages to the landlord who did not have enough time to prepare for the vacancy (see Shaar Mishpat, 312:2). If that is the case, if they were not properly warned, they are presumably not considered liable for indirect damages. However, according to the apparent majority opinion (see Pitchei Teshuva, Choshen Mishpat 312:4, Chazon Ish, Bava Kama 23:7, Mishpetei Shaul 47), until one informs that he is leaving, he is considered as one who is still renting and thus obligated to pay for the next 30 days. If so, more explicit or at least clear relinquishing of rights by the landlord is needed, which apparently did not occur here.

Due to the above factors and in the spirit of peshara, the Beit Din deducts from the defendants responsibility 1/3. The defendants informed the plaintiff of their departure on March 22, and instead of being responsible to pay rent until April 21, they are responsible until April 11 (meaning, for April 1-10). The Beit Din awards the plaintiff 633 shekels.

Payment for this element: 633 shekels.

2) **Painting**

According to the contract, the renter acknowledges that he received the apartment painted and committed to returning it painted if it is reasonably assumed to be in need of painting. While the contract was not renewed officially, when an old agreement ceases to be in effect and the sides continue the financial relationship without replacing it, the old provisions are assumed to continue (see general concept in Rama, Choshen Mishpat 333:8 and, regarding rentals, see opinions cited in Mishpetei Shaul 47). This is all the more obvious in our case where the defendants also assumed that the terms of

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the contract are still relevant, but they rather argued that they are not obligated to paint, even according to the contract. After more than four years of rental, the prevalent practice in Israel is to expect the renter to paint. Since the defendants did not do so, the claim of 2,000 shekels is a reasonable one for an apartment of the size described.

Payment for this element: 2,000 shekels.

3) **Electricity and Water**

There may have been some lack of communication between the sides about the timing and means of the payment, which may have been partially responsible for the unfortunate delay in the payment of the 590 shekel owed. We are pleased that during the break in our proceedings, the defendants willingly paid the balance to the plaintiff, who confirmed receipt before us.

Payment for this element: 0 shekels.

4) **Damages**

General Introduction: There are different opinions among *Acharonim* of our time regarding when one gives a security deposit, whether it puts the burden of proof on the renter to prove that he was not responsible for the damages that now exist (either because they were preexistent or because they were due to natural wear and tear). There is discussion of the matter in case #75020 (which can be found – in Hebrew – on our website), and due to the requests of both sides for a prompt ruling, we will not discuss that matter here. See also Mishpatecha L'Yaakov vol. III, p. 203-4. In general, when there is a discrepancy between the two sides, in times like ours when we do not administer oaths, there is compromise. The extent of compromise depends on general matters such as the burden of proof and by specific and subjective matters regarding the specific claim and its circumstances. In general, we had a slight preference for the claims of the defendants whose claims stood up to Beit Din's scrutiny better than those of the plaintiff. Some of the examples, including the changing of pertinent details of the story from that which had been said with confidence in the hearing, are found throughout this ruling.

We are under the impression, based on the presentations of the sides and the written communications that the plaintiff presented, that there were no damages known to the plaintiff (aside from the issue of water damage, which we will deal with below), prior to

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the defendants leaving the apartment, despite the fact that she and her ex-husband were in the apartment many times in the course of the rental. Rather, the plaintiff indicated that she would do a careful inspection to look for things for which to charge. This is legitimate, but then to try to remember that the damage/change occurred since the defendants entered is something which is difficult to do with certainty. Therefore, the defendants, who one would have to imagine would certainly have remembered when a change or damage took place under their watch through their action, could only have been wittingly lying with a denial, whereas the plaintiff could have easily forgotten. Due to the fact that the plaintiff has not brought proof to her claims, or witnesses to support them, her arguments are therefore lacking enough support to be properly verified. Nevertheless, for some of the claims, since the defendants would theoretically be required to take an oath to support their denial of responsibility, the Beit Din sees fit to obligate some amount in the spirit of compromise.

Since the discussion is regarding relatively small amounts of money, it is not justified for Beit Din to hire a professional appraiser, and Beit Din will estimate based on our own experience and/or a small amount of research.

We now will discuss briefly each element of damage:

a. Crack in the floor – Plaintiff did not have a suggestion as to the possible circumstances under which it occurred and how it would have been an act of damage, as opposed to a matter of wear and tear. She is certain it was not there before. The defendants said it was there before and that they did not engage in any type of activity that caused the damage. Objectively, it does not seem impossible that it could have happened as an unexpected consequence of some natural event in the home, such as moving appliances, a worker's visit, etc. Any scratches in the flooring can be attributed to normal wear and tear, and the defendants are not responsible to pay for them.

Also, it is not always practical/worthwhile to change one tile with a crack. If one would not expect a homeowner to switch the one tile, the damage is for a minor fix-up job (can be done non-professionally) plus devaluation of the apartment (see Chazon Ish, Choshen Mishpat 95:18). This would be less than 500 shekels. Therefore, we will rule based on compromise based on the various factors mentioned. One dayan estimated the payment at 100 shekels. However, the majority opinion: 50 shekels payment**.**
Payment for this element: 50 shekels.

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b. Changing of the door knob and mechanism – The plaintiff says that the defendants switched, without permission, the door knobs in one room, as the same door knob was provided for all. The defendants deny it and say that it would be difficult for them to find, in Israel, a door knob that fit the hole in the door made for the American ones. They submit that the doorknob was the same from when they come.

This disagreement is hard to solve in one direction or another. It is also not clear what the damage is of a changed doorknob in the context of that home. Based on compromise, one dayan ruled 100 shekels. The majority ruled: 50 shekels.

Payment for this element: 50 shekels.

c. Damage to a cabinet under the sink due to unreported dripping. The plaintiff claims 2,000 shekels to replace the whole cabinet. The defendant claims that he complained about a leak in the sink many times over a significant period of time and that nothing was done about it, as often happened for other requests. The plaintiff responded that she was told just once, and that her guest from abroad fixed it right away and told her about the damage caused due to neglect.

The above is what the plaintiff said in the hearing. In a post-hearing communication, she wrote:

> After carefully re-reading the protocal that you sent (review of our testimonies) I saw clearly that I did not explain myself well particularly in the explanation of the bathroom cabinet. When MR. CASPI came to tell us about the dripping faucet, he only mentioned a dripping faucet and NEVER TOLD US THAT THERE WAS WATER COMING DOWN FROM BELOW THE SINK INTO THE CABINET. This is why we were so upset and shocked at the damage. There was a lack of responsibility in not paying attention to the damage happening below the dripping faucet.

The plaintiff is apparently backing out of what she adamantly had said in Beit Din that the defendants had never told her before about the leak. (If the defendants only told her once and it was fixed right away, what difference does it make how he described the leak?!) Beit din had asked her about the coincidence that they asked her specifically when there was someone available who could fix it for free, as the plaintiff and Glen were not able to. (According to the defendants, they had complained many times over a long period, and they were only willing to take care of it when their guest came.) If this is indeed the case, the plaintiff's claim is very strange. (Even if Beit Din's understanding of the plaintiff's submission is not correct, that fact will not change the ruling.) The

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defendants complained about a leak, which apparently had a few affects. The unpleasantness and waste of water bothered the defendants. The damage it caused to the cabinet is that which bothered the plaintiff, not her responsibility to keep the apartment in good working order for her tenants. In order to obligate the defendants, who did not actively do the damage but did not prevent it, it would have to be due to real negligence. When they complained about a leak, even if they did not say that the leak was also causing the plaintiff damage, they did enough for it not to be negligence. If the plaintiff did not care enough to take care of it or check into the impact of the leak on the defendants or herself, it was far more her negligence than theirs (leaks are known to cause a variety of problems to a house). Furthermore, it is far from clear that the situation calls for switching the entire cabinet, most of which is apparently not affected.

In any case, Beit Din did not see that sufficient proof was brought to support the plaintiff's claim, and will not award any payment for damage to the cabinet.

Payment for this element: 0 shekels.

d. Window screen – 200 shekels. The plaintiff claimed that it was missing. Initially, she did not know precisely in what context it happened, but, as the defendants explained, she seemed to agree with the basic story (we will mention the main difference). The defendants explained that one day there was a huge gust of wind that broke the main window and at the same time mangled the screen. The window was replaced by the plaintiff, but they never did anything about the screen, which could not be used. The plaintiff remembered but claimed it was only bent a little bit but could have been fixed, and claimed that since the defendants didn't protect it, it was lost/stolen/blew away.

The plaintiff agrees that she and her ex-husband, who lived upstairs, were involved in the situation with the window, and, as neighbors living upstairs, saw the place the screen was located in the aftermath. The plaintiff did not take steps to protect her property, and the defendants should not be expected to store a large screen, which is not appropriate to easily keep in the house. Therefore, the plaintiff cannot put the blame on the defendants.

Payment for this element: 0 shekels.

e. Damages to the bottom of a second piece of furniture – price not determined.

Previous damage of the nature displayed can happen at any time without notice, including before the defendants took control. The damage is not severe, and it can be

Main Office: 2 Brurya St. P.O.B 8178 Jerusalem 91080 **משרד ראשי:** רח' ברוריה 2, ת.ד. 8178 ירושלים
טל' 02-5371485 Tel פקס 02-5379626 Fax www.eretzhemdah.org beitdin@eretzhemdah.org ע"ר מס' 580120780

ignored or fixed at a low expense by someone who knows how to do it. It is also the type of damage which is easy to attribute to wear and tear. Based on compromise, we allot 10 shekels.

Payment for this element: 10 shekels.

E. **Decisions:**

1. The defendant, Mr. Caspi, must pay the plaintiff, Mrs. Ada **2,743 shekels**.

2. Since the claims of both sides are reasonable, the 200 shekel Beit Din fee should be split equally between the two sides. Therefore, the defendants will pay **an additional 100 shekels** to the plaintiff.

3. Payment is due 30 days from the time the ruling is rendered.

This Psak Din is rendered on the 19th of Menachem Av 5776, August 23, 2016

_____ _____ _____

Rav Shimon Garbuz, dayan Rav Daniel Mann, Av Beit Din Rav Daniel Rosenfeld, dayan

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