זה אין[1] נהנה וזה אין חסר הוא –

It is a case **where this** one **is not benefitting, and this** one **is not losing**

Overview

The גמרא stated if the squatter does not (usually) rent a place to stay, and the owner does not rent out this חצר, it is a case of זה לא נהנה וזה לא חסר and the squatter would be פטור from paying rent. תוספות claims that he would be פטור even if it is a חצר that the owner put up for rent.

אפילו בחצר דקיימא לאגרא וגברא דלא עביד למיגר הוה מצי למימר דפטור[2] -

The גמרא **could have said that** the squatter **is פטור even** in a case where **the חצר is up for rent, but this person does not** usually **rent.** The squatter is פטור in this case -

כיון שלא נהנה[3] אף על פי שגרם הפסד לחבירו[4] -

Since the squatter **derived no benefit, even though he caused a loss to** the owner –

תוספות explains the reason for this פטור:[5]

דאפילו גירשו חבירו מביתו ונעל דלת בפניו אין זה אלא גרמא[6] בעלמא:

For even if someone chased out his neighbor from his (the neighbor's) **house, and locked the door in his face** (not allowing the neighbor to return to his own house), **it is only considered merely an** indirect **cause** and he is not liable. Therefore in this case where he merely lived in the חצר (but did not forcefully prevent the owner from occupying it) he is certainly פטור.

Summary

The dweller is exempt from paying even if it is a חצר דקיימא לאגרא as long as he is a גברא דלא עביד למיגר. Preventing someone from using his own property is considered a גרמא for which one is not liable.

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[1] The גירסא in our גמרות is זה לא נהנה וזה לא חסר.

[2] See 'Thinking it over' # 2.

[3] The squatter had no monetary benefit from staying in this חצר, for even if he would not stay here he would find another place to stay where he would (also) not pay any rent (see רש"י ד"ה אי).

[4] See following תוס' ד"ה זה נהנה, that by the squatter staying in the חצר, the owner will not find tenants.

[5] Seemingly when one causes a loss to his friend he is obligated to compensate him for the loss.

[6] The liability for paying for damages is limited to where the action of the מזיק directly caused an actual damage; he broke something and it diminished in value. Here however, nothing was broken in the house, no harm was done to the owner, he merely is being denied the use of his house and may need to pay for lodging; this loss is not caused directly by the 'מזיק'. This is referred to as a גרמא בנזקין which is פטור מדיני אדם according to all.

THINKING IT OVER

1. The גמרא concludes later[7] that זה נהנה וזה לא חסר is פטור (indicating that there is no חיוב for הנאה). Here תוספות rules that זה לא נהנה וזה חסר is also פטור (indicating there is no חיוב for חסר). Seemingly he should be פטור even for זה נהנה וזה חסר (since neither הנאה nor חסרון causes a חיוב)![8]

2. If indeed one is פטור in a case of זה לא נהנה וזה חסר,[9] why did the גמרא only mention that he is פטור by זה לא נהנה וזה לא חסר, it should have told us that he is פטור even if זה לא נהנה וזה חסר?!

[7] א,כא.

[8] See פני יהושע and נחלת משה.

[9] See footnote # 2.