

**זה נהנה וזה חסר הוא –**

**This is a case where this one benefits and this one loses**

**OVERVIEW**

The גמרא states that if the squatter is one who pays for lodging and the owner rents out this חצר, it is a case of זה נהנה וזה חסר (and not a case of לא חסר) and the squatter is obviously חייב. Our תוספות explains why the owner is a חסר.<sup>1</sup>

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**דכל זמן שרואין את זה עומד בביתו אין מבקשין ממנו להשכיר:**

**For as long as the prospective tenants see this squatter staying in the house, they do not entertain the thought of requesting from the landlord to rent it out to them.** Therefore the owner is losing out on prospective tenants

**SUMMARY**

The loss is that he cannot rent it out as long as the squatter is there.

**THINKING IT OVER**

1. Is the 'חסר' in this case considered an actual היזק (and why), or is this considered a גרמא בנזקין,<sup>2</sup> and if so, why is the squatter liable?!
2. What would be the ruling if it is a חצר דקיימא לאגרא; however currently there are no prospective tenants, is he considered a חסר in this case as well?

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<sup>1</sup> Seemingly, since there is no one renting it now, so what loss is there to the owner by the fact that the squatter is living there, for it is unoccupied anyway, and if someone will come to rent it, the squatter will leave.

<sup>2</sup> See previous תוס' ד"ה זה אין (and 'Thinking it over' # 1).