

## **One who rents out a house – המשכיר בית להבירו בחזקת שהוא בדוק – to his friend with the presumption that it had been searched**

### **OVERVIEW**

The גמרא posed a query; if a house was rented out under the presumption that it was already בדוק and the tenant realized that it was not בדוק, can the tenant break the rental agreement (and not be liable to pay the rental fee). The question seems to be if the bother of בדיקת חמץ is sufficient to cancel the deal. אביי answered that the rental agreement remains intact since a person is pleased to do a מצוה (even if it costs him money). [The reason the tenant wants to break the lease is not because of the בדיקת חמץ, but rather because of other considerations.] תוספות will discuss when the rental took place.



**נראה לרבינו שמשון בן אברהם דבשלשה עשר איירי –**

**It is the view of the רשב"א that this case took place on the thirteenth** of ניסן; the rental became effective on the thirteenth, so there is no חיוב בדיקה on the משכיר. The חיוב בדיקה is on the שוכר because he is the tenant when the חיוב בדיקה begins on the night of the fourteenth.<sup>1</sup> Therefore אביי concludes that) even though it was presumed that he would be exempt from this (בממונו nevertheless a person is pleased to do a מצוה (even טרחה).

**דבארבעה עשר על המשכיר לבדוק:**

**Because if the rental took place on the fourteenth it is the responsibility of the landlord to search.** The house was in the possession of the משכיר when the חיוב בדיקה began on the night of the fourteenth. The חיוב is on the משכיר. There is no issue of מקח טעות. The שוכר can force the משכיר to be בודק.<sup>2</sup>

### **SUMMARY**

The query (and subsequent resolution) concerning חזקת בדוק is if the rental took place on the thirteenth; if it took place on the fourteenth it is the responsibility of the משכיר to be בודק (otherwise, the שוכר may cancel the lease).

### **THINKING IT OVER**

<sup>1</sup> תוספות ד, א ד"ה על previous.

<sup>2</sup> Alternately; if the משכיר does not want to be בודק or is not present we cannot apply the concept of ניהא ליה לאיניש. Therefore he can cancel the lease (or at least demand payment for the expense of בדיקה). [Others however argue that if the משכיר is not בודק, then there is a חיוב for the שוכר to be בודק (see the ר"נ on the רי"ף).]

What does בחזקת שהוא בדוק mean if the rental took place בי"ג, and what does it mean if the rental took place בי"ד?