

Does Halachah Allow for Late Fees?

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Question: Due to the coronavirus and the resulting financial difficulties, some renters have had trouble paying their rent in a timely manner and have had late fees imposed upon them. Is it permitted according to the halachah to charge (and pay) a late fee if the landlord and tenant are both Jewish?

Answer: The relevant halachic issue with regard to a late fee is that of *ribbis* (forbidden interest). In essence, from a halachic standpoint, a tenant who does not pay rent on time is holding onto money that he owes to another person. The late fee, then, is an additional charge on the tenant for not giving the money that he owes to the landowner at the proper time. The Rema (Y.D. 177) states that where such a charge is imposed as a late fee, in a case of an exchange of money for a commodity, it is not considered *ribbis* and is permitted. The reason is that it is defined as a *kenas*, or punitive measure, for withholding the rental money or to serve as a deterrent for the future. It is not, though, treated as giving interest on a loan.

Since the case is one of *mekach umemkar* (transaction), i.e., an exchange of goods (in this case the house) for money or vice-versa (as opposed to an actual loan), any potential *ribbis* issue is reduced to a *derabanan* issue. Therefore, because it is structured as a *kenas*, such that each late fee is only a one-time fee, and it does not accrue over time (such that the longer that one does not give the payment, the more one pays), it is permitted to charge this type of late fee. If, however, the late fee sum accrues over a period of time that the tenant does not pay his rent, it would indeed be forbidden as *ribbis derabanan*.