

If a Landlord Overcharges a Tenant, Is It a Problem of Onaah?

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Question: Reuven is looking for an apartment to rent. He finds one he likes and the owner tells him it is \$2,000 a month. After he signs the agreement, he speaks to his new neighbors and discovers that all of the identical apartments to his are paying only \$1,200. Can he demand that the landlord renegotiate the rent because he overcharged him?

Conversely, what if a tenant says he'll pay \$1,200 and the landlord agrees, but the landlord later discovers that the going rate is actually \$2,000? Can he demand that the rent be renegotiated because he is being underpaid?

Answer: The prohibition of *onaah* goes both ways. A landlord cannot overcharge a tenant and a tenant cannot underpay. In a normal case of significant *onaah*, either party can annul the deal; however, we know that there is a rule of "*ain onaah l'karkah*", *onaah* does not apply to land, which would seem to mean that one cannot negate a rental of property because of *onaah*.

There are, however, two caveats to this. Firstly, the Ramban and other Rishonim say that "*ain onaah l'karkah*" only applies *b'dieved*. This means that after the fact, a deal cannot be annulled due to overcharging or undercharging. It does, however, apply *l'chatchilah*, meaning that it is forbidden to overcharge or underpay going forward.

Secondly, a house is not necessarily classified as *karkah*. Technically, it consists of moveable objects that are attached to the ground. Regarding such an object, there is a *machlokes* Rishonim if it has the status of *karkah* or not.

Since this is a case of a *safek d'ohraysa*, it would seemingly be forbidden for the landlord or tenant to continue with this arrangement, provided that the overcharge or undercharge is more than one-sixth of the normal price and that the aggrieved party was unaware he was getting a bad deal at the time he agreed to it.

Question: What if a tenant signed a lease for \$1,200, and then the market went up and the standard price rose to \$2,000? Can the landlord claim that he is being underpaid?

Answer: If they are in the middle of a contract, there would not be an issue of *onaah* because the price was correct when they made the deal. A renewal option at the same price also would not be *onaah* if the price was set according to the market at the time. Once it converts to a month-to-month basis, the halacha is not so clear, but even in such an instance there is a strong case to be made that since this was the correct price when the tenant moved in, there is no issue of *onaah*.