

Is a Tenant Liable For Wasting Electricity?

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Question: I went away for the summer and rented out my house to some tenants. I informed them that I wouldn't be coming home until a few weeks after they left; therefore, I asked them to turn off the air conditioner before they leave. They did not do so, and instead left the air conditioning running at 65 degrees for the three weeks until I came home. This led me to have a very high electric bill. Are they obligated to pay for this?

Answer: It is possible that the tenants are liable because of the rule of *garmit*; however, *garmit* comes along with some leniencies, so that's a difficult avenue of liability to pursue. What we can determine is whether or not they are liable as an *odom hamazik* by leaving on the air conditioning and causing a colossal waste of electricity.

The Gemara speaks about a case where a person releases water and, thereby, causes damage, and says that such a person is an *odom hamazik*. Releasing electricity would seem to be similar to releasing water and would also fall under this category. However, the Gemara says that one is only liable as an *odom hamazik* if the water damages as a "*koach rishon*", the first burst of water. The subsequent flow of water is considered "*koach sheni*", and is no longer categorized as an *odom hamazik*. In the case of the air conditioner, once it is running for a few minutes it definitely is considered *koach sheni*, which would seem to mean that the tenant cannot be held liable for the wasted electricity as an *odom hamazik*.

However, Rav Shlomo Zalman Auerbach points out that the rule that *koach sheni* is not considered an *odom hamazik* only applies to cases where the water flows forth and damages something else. Whereas, if the damage in question is that of the liquid itself that flows out, it would be considered his direct action. For example, if someone opens a tap to let wine out of a barrel, he definitely is liable to pay for all of the wine that is lost – even the liquid that flows out as a *koach sheni*. Here too, the electricity that is released by leaving on the air conditioner is the actual thing that was "damaged"; therefore, it can be compared to the wine in the example above and the tenant could be held liable as an *odom hamazik*.