

Rent Control: the law and The Law? Dina Demalchusa Dina and tenant's rights
How
Does Halacha Relate to Rent Control Laws?
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Question

My
tenant's lease expires in a couple of weeks, and I have given him notice to vacate upon its termination. He responded that *Chazal* have
instituted various rules protecting tenants from eviction in situations where it is difficult for them to find new premises, and that the secular law in our jurisdiction also forbids eviction in our circumstance. Am I really barred from
utilizing my property as I see fit?

Answer

While
it is true that *Halacha* forbids
eviction under certain circumstances, this does not apply to our scenario, since the lease contains an expiration date. Thus the only remaining issue is whether *Halacha* considers
secular rent control legislation binding between Jewish landlords and tenants.
This is a question that has been heavily debated over the last century and a half, with no clear consensus emerging. There are two *halachic* principles
that potentially call for the acceptance of the secular law:

- *dina*
de'malchusa dina - "the law of the [temporal] government is the law"
- *minhag* - in monetary
matters, particularly contractual ones, we usually follow the prevailing custom.

Dina De'Malchusa Dina

The
application of *dina d'malchusa dina* to rent
control legislation hinges on several major disputes among the *poskim* over
the scope of the principle:
• Some *rishonim*
limit
the principle of *dina d'malchusa dina* to
legislation that directly concerns governmental interests, such as taxation

and

currency regulation, while others disagree and extend it to any legislation for

the benefit of society. It seems that *dina d'malchusa dina* can only apply to rent control legislation under the latter view, as there is no direct governmental interest served by such legislation. Moreover, there is an opinion

that even the broader standard of "societal benefit" is not met, since although

the legislation benefits tenants, it does so at the expense of landlords, and so cannot be said to be for the general good of society.

- Some *poskim*

insist

that in general, we ignore any law that contradicts *Halacha*, others disagree. In the particular context of rent control, some argue that such legislation constitutes an un-*Halachic* taking of property, particularly insofar as the law's primary supporters are "free[-thinking] representatives, who hold the doctrines and opinions of the communists and socialists, to squeeze the rich and take their money, and all these doctrines are against *da'as Torah*".

- There is an opinion that the

criterion for the application of *dina d'malchusa dina* is that the law be "according to the *Torah*", which is determined by the existence of relevant *Halachic* precedent.

Some therefore argue that since *Chazal* have already instituted certain protections against eviction, a secular law forbidding eviction (but not a law prohibiting the raising of the rent to market rates) is valid.

- Some *poskim*

suggest

that even if the traditional criteria for *dina*

d'malchusa dina do not apply, we still accept contemporary rent control legislation, either because modern democratic governments have more *Halachic*

authority

than the ancient autocracies, or because in the absence of our traditional independent communal structure, we have no choice but to recognize secular

legislation.

Minhag

Many

poskim maintain that regardless of the applicability of *dina*

d'malchusa dina to rent control legislation, insofar as the law already existed at

the time of the initial contract between landlord and tenant, this creates a *minhag*, and we

apply the standard rule that any agreement is presumed to incorporate the prevailing custom.

Of

the *poskim* who are skeptical toward rent control legislation, most do not raise the question of *minhag* at all, and

their attitude toward the above argument is therefore unclear. There are those,

however, who explicitly reject the idea of following such a *minhag*, asserting

that it is not a "*minhag vasikim*", and only exists because of the impotence of *Bais Din*.

Conclusion

There

is considerable debate over whether the principle of *dina d'malchusa dina* applies to rent control legislation. Many *poskim* maintain

that even if it does not, the law still creates a binding *minhag*. However, this too, is not unanimously accepted, although the level of opposition to this

approach is somewhat unclear.

The

normal rule in the case of unresolved *Halachic* disputes is that the possessor of the property in question (*muchzak*) is entitled to retain it (*ha'motzi me'chavero alav ha'rayah*), but in our scenario, the very question of who is considered the *muchzak* is

itself the subject of considerable dispute.