

What Does a Tenant Owe If He Backs Out of Renting an Apartment Without Signing a Contract?

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Question: Reuven owns an apartment and is looking for a tenant, while Shimon is looking for an apartment to rent. Shimon looks at Reuven's apartment and decides he wants to rent it. He gives him a security deposit and commits to renting the apartment for two years, but he does not sign any contract. Later, he finds another apartment that he likes better and wants to back out on Reuven. He is aware that he won't get back his deposit, but does he also owe the rent for the full two years?

Answer: Had he made a proper *kinyan*, he would be bound to the agreement and would owe the rent for the full two years if he does not find a replacement tenant.

In this case, however, there was no contract, so there is no *kinyan* of *shtar*. While *keseif* normally is a *kinyan* for land, and one only needs to give a partial payment for the *kinyan* to go into effect, the security deposit would also not be a *kinyan*. This is because a security deposit is not really a rental payment. It actually is a security for the landlord that he can hold onto in case something in the apartment gets damaged or there is some other type of loss. From a legal perspective, the money should really be put into an escrow account that the owner does not have access to; so, it is obvious that it is not really a payment. Even if they agreed not to put the money into escrow, it is still only akin to a *mashkon* to be used for any balances, and not a payment.

Accordingly, it would not qualify as a *kinyan* and, therefore, if the tenant backs out, he would only lose the deposit and nothing more.

Question: What if Shimon gave the money not as a security deposit but as the first and last months' rent? Would that be a *kinyan*?

Answer: That would technically be a *kinyan* and he would be bound to the entire lease. Still, there are some Acharonim who say that if the rent was given early before it is actually due, it is not considered a payment, as it was only given to reserve the apartment, even though it will later be used as a payment. That might be a way to exempt him from being bound to the entire two-year lease.