**Jewish Business Ethics**

**Withholding rent**

*If my landlord fails to maintain the flat, what are the Jewish ethical issues involved in deciding whether or not I can withhold rent?*

The starting point for a Jewish ethical analysis of the issue of withholding rent is the fact that tenancy is a form of contract between the tenant and the landlord. The starting point for the Jewish ethical attitude to contracts is that both sides have in effect made promises to perform specified obligations, of which paying the rent is the primary obligation of the tenant. Aside from the fact that *halachah* supports the application and enforcement of the *dina d’malchuta* (secular law) in respect of contracts, from a purely ethical perspective the duty to perform a promise that I have made is not automatically excused by the fact that other people have failed to perform promises that they have made to me.

This notion is qualified where the promises are seen as reciprocal in intent.

It is not right for me to try to “take revenge” on someone who has broken a promise made to me, by breaking a promise that I made to him or her. The English adage “two wrongs don’t make a right” is strongly supported by the Jewish ethical notion that I am responsible for my own standards of behaviour and am not excused from behaving properly by the fact that other people may have behaved as badly or worse.

But reciprocal promises are made in the expectation (to a greater or lesser extent) that their performance is inter-dependent; and obligations under a tenancy are one of the best examples. I am paying rent in effect as the price of the provision to me of a property that can be occupied in a reasonable state of comfort – and failure to maintain the property in that state justifies me to some extent, ethically if not legally, in modifying my own obligations. In essence, the tenant’s obligation to pay rent is directly related to the landlord’s obligation to maintain the property: my acceptance of the obligation to pay rent rested implicitly on the expectation of performance of the landlord’s obligations under the tenancy, so I am not “breaking my word” if I match performance of my obligations to the performance of the landlord’s obligations.

English secular law recognises this to a certain extent. It does not in general permit tenants to withhold rent even where the landlord is in breach of obligations under the tenancy; but in certain circumstances the tenant may have the right to use money that would have been paid in rent to pay for repairs that the landlord ought to have carried out. This is a limited right, subject to taking specified procedural steps, and should not be relied on without advice, as it could lead to the tenants making themselves vulnerable to possession proceedings, whether or not the landlord should have done the work originally. But it does reflect the ethical notion that the promises in a tenancy are to some extent inter-dependent.

The *halachah* too supports this notion, which may become of practical relevance where the tenant and landlord are both orthodox Jews whose religious obligations require them to submit civil disputes between them to a *Beis Din* before taking enforcement action in the secular courts. Some tenancy agreements between orthodox Jews will stipulate for arbitration in a *Beis Din* in cases of conflict; while many situations will either require or permit alternative dispute resolution before resorting to legal proceedings, and a *Beis Din* is capable of acting as an arbitrator under the Arbitration Act 1996 (in which case its awards can be enforced through the secular law in accordance with the provision of that Act). A *Beis Din* will approach cases wherever possible through an approach of *pesharah* (compromise); and as one of the considerations to be applied for that purpose, it may explore setting off corresponding obligations between the parties. So even though the tenant owes the rent to the landlord whether or not the landlord has performed his or her obligations, a failure to maintain which has caused the tenant the financial loss entailed in carrying out work that the landlord should have done creates, in effect, a debt from the landlord to the tenant which could be set against the debt of unpaid rent.

In the climate of today’s housing market the avoidance of oppressive or extortionate practices is most obviously seen as an issue for landlords; but it is equally important for tenants, who have much of the law on their side particularly when it comes to obtaining possession of a residential property. Much as it will be clearly unethical for landlords to ignore their obligations under a lease in the knowledge that they can insist on the payment of rent independently of their own performance, so too it may be unethical for a tenant to withhold rent on the excuse of the landlords’ failure to perform a minor obligation or where the landlords have clearly done everything possible to attempt to perform their obligations.

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