

Dear Rabbi Fried,

As a semi-observant Jew and real estate agent, I have some questions when dealing with a Jewish client. Does one operate according to secular norms, or are there Jewish laws to conduct ourselves in accordance with. For example: landlord-tenant disputes over maintenance and repairs; subletting; breaking leases, etc. Also, when there are disagreements, could or should we take them to a secular court, or are there Jewish courts available to adjudicate these issues?

Sheryl K.

Dear Sheryl,

There is *Halacha*, Jewish Law, which pertains to these questions and myriad other issues which arise concerning real estate management. As a general rule, *Halacha* must be followed between two Jewish people. This is true unless there is a clear, widespread practice commonly followed called the *minhag hamakom*, or “custom of the place”. *Minhag hamakom* would override *Halacha* when it is such an accepted norm that both parties implicitly agree to abide by it when they sign a contract.

With issues of maintenance and repairs, as a rule we follow the *minhag hamakom*, accepted norm, unless stipulated otherwise in the contract, or both parties agree to abide by *Halachic* requirements. The *Mishna* (Bava Metzia 116b) states that the landlord is responsible for repairs that require a professional, the tenant is responsible for those that do not require a professional. *Code of Jewish Law* (Ch. M. 314:1 in Rem”a) clarifies that these guidelines apply only if the unit needed repairs at the time of the lease. However, if at the time of the lease the unit was in good condition, and the repair became necessary later, it would be the tenant’s responsibility regardless of whether it required a professional. To avoid misunderstandings, *Halacha* advises to write a detailed lease that clearly stipulates the obligations of each party to avoid later disagreements.

In the absence of any *minhag hamakom* to the contrary, *Halacha* typically allows a tenant to sublet his unit to a third party. This rule has limitations. *Halacha* says the tenant may not sublet the unit to a larger family than his own, as they are more likely to cause damage to the unit. It can also not be sublet to someone who, based on his reputation or demeanor, is liable to do damage to the property. If other terms are in the contract, the contract overrides *minhag* and *Halacha*.

According to *Halacha*, if a tenant leaves during the lease period, he will be responsible to pay rent until the end of the term. However, if the landlord finds a replacement for the tenant, the may not charge rent to both the tenant and the replacement. It is the responsibility of the tenant to actually find a replacement.

According to Jewish law, should a dispute arise between a Jewish landlord and tenant, they must resolve the dispute in a *Beis Din*, or Jewish monetary court. Neither party has the right to initiate legal action in any form of secular court. Even if the lease sanctions certain legal action, the parties are obligated to submit all disputes to *Beis Din*. Tenants have special protections under law. There are various rent-control law and limits on a landlord’s ability to evict a tenant. A *Beis Din* will take these law into account when adjudication a landlord-tenant dispute, and made a determination if the how to apply the various governing laws. Even when the dispute hinges upon the interpretation of a secular law, one is required to submit the dispute to a *Beis Din*.

This is, of course, assuming both parties are willing to submit to a *Beis Din*. If one of the parties is a secular Jew who is unwilling to do so, the observant Jew may receive a ruling from a Jewish court to adjudicate the dispute in secular court. (For more details, see “*Business Halachah*” (Artscroll pp211-215).