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Help, My Windows Are Sealed!

By **Ronda Kaysen**

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Ask Real Estate is a weekly column that answers questions from across the New York region. Submit yours to realestateqa@nytimes.com.

It's Stuffy in Here

I live with my family in a rent-stabilized apartment in a high-rise condominium that is undergoing facade repairs. All our windows are sealed, except for one small bedroom window. We cannot see outside clearly, nor can we open the windows. The air-conditioners have been sealed and wrapped in plastic. Without fresh air, the inside air quality is poor, mold grows in the bathroom and cooking odors linger. This summer, indoor temperatures could easily soar into the 90s if we cannot open the windows or use the air-conditioning. I'm concerned for my family and for our small dog. We have been told this situation will continue for another year. Is this fair? Can I buy an indoor air-conditioner and deduct the cost from the rent?

Upper West Side, Manhattan

You and your family are entitled to have access to light and air, regardless of the work being done on your building. Mold could pose a health risk, and exposure to extreme heat could be dangerous for your family and your pets.

The city's housing and maintenance code prohibits building owners from reducing light and ventilation in any room in an apartment, said Jonathan I. Mann, a Manhattan real estate lawyer. A condo association is certainly expected to comply with this rule, and so is your landlord.

As a renter, you are also protected by the warranty of habitability, a state law that requires landlords to keep apartments and buildings safe and livable at all times. "A

tenant in a condominium has an absolute right to a safe, sanitary and habitable unit,” Mr. Mann said.

Condo owners, however, are not protected by the rule, because they are not considered tenants.

Reach out to neighbors, who must be enduring the same misery as you. The more voices that demand air, the better chance someone will listen. Ask them to write letters to the condo association and the managing agent demanding that the board find a way to repair the facade without violating state and city rules. Write to your landlord, too.

You and your neighbors should also call 311, reporting the condition to the Department of Buildings and the Department of Housing Preservation and Development. Inspectors from those departments could issue violations against the building.

It would be difficult to recover the cost of an indoor air-conditioner from your landlord, and it might not even work, since such appliances usually need to be vented through a window. Instead, you could request a rent reduction for loss of services from the Division of Housing and Community Renewal, which oversees rent-regulated apartments. A rent reduction would get your landlord’s attention, but it would not get the windows open. For that, you could file an HP proceeding in Housing Court, where a judge could order the condo association or your landlord to remedy the problem or face fines.

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Mysterious Move-in Fees

When I submitted an application for a co-op apartment, I had to pay the board a \$300 application fee, a \$100 credit-check fee and a \$500 move-in fee. After my interview with the co-op board, I was notified that my application had been rejected. None of my fees were returned. I can understand the application and credit-check fees. But why isn’t the move-in fee refundable?

Howard Beach, Queens

Applying to live in a co-op is a daunting experience. You bare your financial soul, pay enormous fees and endure a prying interview. After you subject yourself to such scrutiny, a fickle board can reject you for no reason at all. But to charge a rejected applicant a move-in fee for a move that never transpired seems particularly cruel.

The purpose of a move-in fee is to compensate a co-op for any extra wear and tear on the building and extra use of the building's elevators and its staff. But in your case, none of those things ever happened, so the fee is unnecessary.

Check the application to see if it says that the move-in fee is nonrefundable. If it does not include such language, you might have a good argument that the application was ambiguous about this fee and that you have a right to a refund because the co-op board rejected your application, said Stephen M. Lasser, a Manhattan real estate lawyer.

Write a letter to the co-op board and the managing agent requesting that it refund your move-in fee. Demand an explanation.

If the board or managing agent refuses, you could file a claim against the co-op in small claims court.

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Ownership of Air Rights

I live in a six-story co-op building with a large footprint. We've heard that our building's air rights were sold years ago. Nobody on the board knows if this is true. Is there any way for us to find out if the air rights have been sold?

Midtown East, Manhattan

You are not the first New Yorker to gaze at the sky above you and wonder how much money could be had for it. The trading of air rights from one property owner to another has given the city some very tall buildings. The 72-story Trump World Tower

at 845 United Nations Plaza is one such example.

Like most real estate transactions, the sale of air rights is a matter of public record. It should be fairly easy to determine if yours have been sold, said Harvey I. Krasner, a Manhattan real estate lawyer. Start with the Automated City Register Information System, an online system commonly known as Acris. Plug in your building's block and lot number to find out if a sale of development rights has been recorded.

If you are still uncertain, your co-op could hire a title company to run a definitive report. A zoning or land-use lawyer could help determine the development rights your property has and the value.

Even if your co-op discovers that it has considerable air rights to sell, they are only valuable if someone wants to buy them — and air rights must be transferred to a neighboring property. So unless a developer comes along with plans to build a high-rise alongside your building, you cannot unload them.

But you might be able to use them to add onto your own co-op, depending on the specific circumstances of your building, Mr. Krasner said.

Submit your questions to torealestateqa@nytimes.com

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