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Q & A; If a Terrace Is Unusable, Is the Rent Reduced?

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Q. *I rent a penthouse studio with a large terrace. There is major construction on the exterior of the building, making the terrace impossible to use. This was not a problem in January, when construction began and I wasn't using the terrace. But now that the weather is warming, they are telling me that they don't anticipate completion until July.*

Am I entitled to a rent reduction?

A. "The answer to this question depends almost entirely on the lease that the questioner holds and where the property is located," said **Adam Leitman Bailey**, a Manhattan real estate lawyer.

Mr. Bailey said that generally a landlord had the right to make repairs and improvements to an apartment and to the building without being required to reduce the tenant's rent during the construction period.

In most cases, a lease will give the tenant only a limited right to use a terrace. "It may call that right a 'license' or it may call the terrace a 'common area,'" **Mr. Bailey** said, "but in such a case, whatever language the lease uses would deprive the tenant of the right to a rent reduction during periods of terrace loss."

He added, however, that if the terrace was defined in the lease as part of the rented premises, deprivation of the use of the terrace for the purpose of doing repairs or improvements to the property could entitle the tenant to a rent reduction.

In Manhattan and the Bronx, an appellate court has ruled that the reduction would be based on the portion of the terrace that is not usable by the tenant. For example, if the premises including the terrace are, say, 1,000 square feet, and 50 square feet of the terrace is unusable, that proportion of the rent — 5 percent — would be forgiven.

In other parts of the state, it is possible the entire rent could be forgiven during a time that even a portion of the terrace is unusable.