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Breaking a Lease Over Unlivability

Q & A

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Q. *I rent an apartment in a building heavily affected by the hurricane — there was no power for several days, and the management is citing extensive damage to the elevators and heating system, and cannot give any reasonable estimate as to when the building will be fit for occupancy. My apartment is on the 25th floor, and without elevators it's infeasible to climb up and down to it every day, not to mention impossible to live in without heat or water. Given the circumstances, can I break my lease and move out without owing rent for the five months remaining on the lease?*

A. **Dov Treiman**, a Manhattan real estate lawyer, said that when a building becomes essentially impossible to live in, for whatever reason, the legal doctrine of “constructive eviction” allows the tenant to vacate the apartment without responsibility for future rent, even if there is a lease. “There are no hard-and-fast rules for what does and does not constitute constructive eviction,” he said, but lack of heat, water and elevator service to the 25th floor would certainly qualify. Still, **Mr. Treiman** also points out that constructive eviction does not relieve the tenant of liability for paying the rent if the tenant decides to “tough it out” and remains in the apartment and lives with the hardship. He says many leases allow the tenant to break the lease if the apartment cannot be restored to usability within 30 days.