

Bold Group, LLC v Rachmut
2026 NY Slip Op 30884(U)
January 14, 2026
Supreme Court, New York County
Docket Number: Index No. 653735/2022
Judge: Gerald Lebovits
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

-----X

BOLD GROUP, LLC,

Plaintiff,

- v -

OMRI RACHMUT and AMIR SHRIKI,

Defendants.

-----X

INDEX NO. 653735/2022

MOTION DATE 06/21/2024

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 102, 103, 104, 105, 110, 112, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127

were read on this motion to RENEW/REARGUE.

Bedford Soumas LLP, New York, NY (Gregory S. Soumas of counsel), for plaintiff.
Belkin Burden Goldman LLP, New York, NY (Adam M. Bernstein of counsel), for defendants.¹

Gerald Lebovits, J.:

This action arises from a residential lease. Plaintiff, Bold Group, LLC, is the owner and landlord of the residential building located at 212 East 14th Street in Manhattan. Defendant Omri Rachmut leased an apartment from plaintiff in November 2018. The lease expired on April 30, 2021. Defendant Amir Shriki signed an agreement guaranteeing Rachmut’s payment of sums owed under the lease. (NYSCEF No. 25 at ¶ 17 [amended complaint].)

Rachmut entered into a written lease renewal with plaintiff dated January 1, 2021. The lease renewal expired on April 30, 2022. (See NYSCEF No. 25 at 1-2, ¶¶ 3-5.) Although the renewed lease expired, Rachmut continued to occupy the apartment from May 1, 2021, through May 2023. He did not pay any rent or late fees to plaintiff during this period. (See NYSCEF No. 25 at 2, ¶¶ 13-15.)

Plaintiff brings this action against Rachmut for use and occupancy (U&O) between May 1, 2022, and May 2023; late-payment fees; and attorney fees. (See NYSCEF No. 25 at 2, ¶¶ 8-11.) Plaintiff also sues Shriki for breach of guaranty and attorney fees.

Defendants raise several affirmative defenses, including that plaintiff failed to cure a rent-impairing violation—a roof leak—and charged excessive late fees and improper holdover rent. Defendants counterclaim for (1) a determination that plaintiff is not permitted to collect rent

¹ The parties retained new counsel after submission of this motion. (See NYSCEF Nos. 136, 137.)

due to a rent-impairing violation; (2) a determination that Shriki's guaranty obligations ceased due to the rent-impairing violation; (3) return of defendants' security deposit; (4) tenant harassment; and (5) attorney fees and costs. (NYSCEF No. 40 at 18.)

Defendants previously moved for summary judgment dismissing plaintiff's complaint and for summary judgment on their first, second, and third counterclaims (mot seq 003).² (NYSCEF No. 61 at 2-3 [memo of law on mot seq 003].) As part of its March 2024 decision, this court denied the branch of defendants' summary-judgment motion dismissing plaintiff's complaint. (*See Bold Group, LLC v Rachmut*, 2024 Slip Op 50432[U], *3 [Sup Ct, NY County 2024].)

On that motion, defendants had argued that plaintiff failed to correct the roof leak timely. According to defendants, the leak persisted for the duration of their tenancy and constituted a rent-impairing violation. (NYSCEF No. 61 at 3.) Defendants relied on an "a copy of an open-violation report maintained by the New York City Department of Housing Preservation and Development (HPD), listing an open violation in the form of a roof leak." (*Bold Group*, 2024 Slip Op 50432[U], at *1.) This court held that defendants had made out their prima facie case for a rent-impairing violation under Multiple Dwelling Law § 302-a. (*See id.*)

Plaintiff relied on the same open-violation report, but "point[ed] to the report's notation that the building owner provided a certification in December 2009 that the violation *had been corrected*." (*Id.* [emphasis added].) This court found that plaintiff raised a triable issue of fact about whether the roof leak was repaired before Rachmut ever resided in the apartment or ever existed. (*See id.* at *2.)

In that decision, this court also pointed that both sets of parties provided only "thin evidence" to support the (non) existence of a rent-impairing violation. (*Id.*) This court further noted that plaintiff could have provided additional evidence to support that the leak was fixed or that "HPD was mistaken in believing that the roof leaked in the first place." (*Id.*) In addition, this court also noted defendants could have "provide[d] evidence that the certification was inaccurate." (*Id.*)

This court also denied the branch of defendants' summary-judgment motion for "\$500 remaining from the security deposit that has not been returned, plus punitive damages under General Obligations Law (GOL) § 7-108 (g)." (*Id.*) This court was unpersuaded that "plaintiff's failure to return the deposit should be treated as a violation of GOL § 7-108 (e)-(g)" because plaintiff was "entitled under the lease to have applied the \$500 to the claimed amount." (*Id.* at *2-3.)

On motion sequence 005, defendants move to reargue this court's determinations on motion sequence 003. (*See* CPLR 2221 [d].) Plaintiff also constructively moves to renew this court's determination on that motion. (*See* CPLR 2221 [e].) Defendants' motion to reargue is granted in part and denied in part. Plaintiff's motion for renewal is granted.

² The first, second, and third counterclaims are the same as the tenth, eleventh, and twelfth affirmative defenses, respectively.

DISCUSSION

I. Motion to Reargue

Defendants move to reargue this court’s summary-judgment decision. Defendants argue that (1) after satisfying their prima facie burden, this court “improperly imposed Plaintiff’s burden of proof upon Defendants by requiring them to present evidence that Plaintiff’s certification of correction of the Violation was inaccurate” and (2) the court improperly “set aside the strict liability requirements of GOL § 7-108(1-a)-(e),” which requires plaintiff to forfeit its right to retain any part of the security deposit unless it provided an itemized statement, stating the basis for retaining the deposit. (NYSCEF No. 103 at 2.)

A. Defendants’ first contention—that this court improperly imposed plaintiff’s burden of proof to show the certification was inaccurate—is unavailing. After defendants successfully made out their prima facie case, plaintiff raised a triable issue of fact by referring to a notation on the HPD report, which indicated that plaintiff had fixed the roof leak. To rebut the showing of a triable issue of fact, defendants were required to show that the evidence purporting to raise that issue of fact does not, in fact, do so. In other words, defendants would have to show that the certificate of correction—which raised the material dispute of fact—is inaccurate or otherwise fails to raise the factual dispute about the rent-impairing violation. Defendants did not do so; they filed no reply papers to counter plaintiff’s opposition papers.

The branch of defendants’ motion to reargue this court’s decision on grounds of improper burden-shifting is denied.

B. Defendants’ second contention—that the security deposit may not be used to offset unpaid rent if plaintiff provided no itemized statement—is meritorious. Under General Obligations Law (GOL) § 7-108 (1-a) (e), a “landlord shall provide the tenant with an itemized statement indicating the basis for the amount of the deposit retained” within 14 days of tenant’s vacatur or “shall forfeit any right to retain any portion of the deposit.” In addition, GOL § 7-108 (1-a) (b) provides that a landlord may retain the amount of the security deposit “for the reasonable and itemized costs due to non-payment of rent, damage caused by the tenant beyond normal wear and tear, non-payment of utility charges payable directly to the landlord under the terms of the lease or tenancy, and moving and storage of the tenant’s belongings.” The security deposit thus serves to offset *itemized costs*, not the amount tenant owes in rent (*Id.* [emphasis added].) Only the itemized statement itself triggers landlord’s ability to keep the security deposit under the statute; the nonpayment of rent does not. (*See Mihalow v Rane*, 2025 NY Slip Op 51234(U), *5 [Sup Ct, NY County 2025] [“As the first of these grounds offered in [GOL § 7-108 (1-a) (e)] is ‘non-payment of rent,’ [this] entirely undercuts plaintiffs’ argument that they could apply the security deposit toward rent arrears without providing defendants with an itemized statement explaining their rationale for retaining the entire deposit.”].)

Defendants also seek interest and punitive damages under GOL § 7-108 (1-a) (g). Defendants are entitled to pre-judgment interest at the statutory rate (9% per annum) running from June 15, 2023—the first day after the 14-day deadline to provide the itemized statement. (*See* CPLR 5001 and 5004.)

As for punitive damages, GOL 7-108 (1-a) (g) provides that “a person found to have willfully violated [GOL 7-108 (1-a)] shall be liable for punitive damages of up to twice the amount of the deposit or advance.” Defendants argue that plaintiff willfully failed provide the itemization. Defendants claim that Rachmut apprised plaintiff of its obligation to provide the itemized statement when he submitted his amended answer in this action on June 9, 2023—nine days after defendants vacated the premises (May 31, 2023). (*See* NYSCEF No. 61 at 15.) But this court is unpersuaded that this alone evinces willful intent to violate the itemization requirement.

The branch of defendants’ motion to reargue the security-deposit portion of this court’s decision on motion sequence 003 is granted. Given that plaintiff never provided an itemized statement to defendants, summary judgment on this counterclaim is granted to defendants for the return of the remaining \$500 of the security deposit. Defendants’ interest request is granted, and their request for punitive damages is denied.

II. Supplemental Submissions

In considering defendants’ reargument motion, this court became aware that HPD updated its records to reflect the roof-repair violation as “Reissued” in 2024. This court therefore directed the parties to submit supplemental letter briefing on how reissuance of the violation should affect this court’s disposition of the reargument motion. (*See* NYSCEF No. 129 at 2.)

Plaintiff represents that it applied to HPD to reissue the violation—as required to obtain the violation’s removal—in November 2024. (NYSCEF No. 118 at 2) Plaintiff submits the certificate of correction that it provided to HPD with its application. That certificate reflects a cure date of November 3, 2014. (*See* NYSCEF No. 120 at 4 [pdf pagination].) Importantly, plaintiff also provides evidence that the roof was repaired in the course of an expansion project which increased the number of stories in the building. That project ended in August 2015—years before the 2018 commencement of defendants’ tenancy.³ Plaintiff’s evidence includes a 2014 proposal from its contractor to repair the roof (NYSCEF No. 121); the New York City Department of Building’s “sign off” on the completion of the expansion in August 2015 (NYSCEF No. 122 at 1); and a certificate of occupancy for the expanded building issued in August 2015 (NYSCEF No. 126 at 1). Plaintiff contends in its supplemental submission that it should be awarded summary judgment as the non-moving party because it has shown that the violation was cured. (*See* NYSCEF No. 118 at 3.) This court construes that request as one for renewal. (*See* CPLR 2221 [e].)

Defendants argue that even after seeking the 2024 reissuance, plaintiff failed timely to provide its certificate of correction, such that there remains an open violation on the HPD record. (*See* NYSCEF No. 128 at 3.) Defendants further contend that although plaintiff asked HPD to inspect the premises to determine whether the violation was cured (*id.*), plaintiff never provided

³ Plaintiff also argues that HPD violation on the roof leak was issued in 2003 but corrected in 2009. (*See* NYSCEF No. 118 at 2.) According to plaintiff, HPD’s records were never updated to reflect that the violation was cured, only that HPD received of a *certificate* of correction in 2009. (*See* NYSCEF No. 96.) Plaintiff provides no evidence, however, that the roof was actually repaired by 2009.

the inspector with access (NYSCEF No. 133 at 2 [pdf pagination]). These contentions are unavailing.

Although the plaintiff may not have followed proper protocol to obtain removal of the violations, it has shown that the violation was cured and therefore that defendants are not entitled to a rent abatement. As Multiple Dwelling Law (MDL) § 302-a (3) (b) provides, a tenant is not entitled to rent abatement due to a rent-impairing violation noted on HPD records when “the condition which is the subject of the violation has in fact been corrected.” In addition, defendants have submitted no evidence indicating that the roof is still in disrepair.

This court thus concludes that plaintiff is entitled to summary judgment dismissing defendants’ defenses and claims predicated on MDL § 302-a: the tenth affirmative defense/first counterclaim; the eleventh affirmative defense/second counterclaim; and the fourth counterclaim to the extent is alleged tenant harassment based on a failure to cure the rent-impairing violation).

Accordingly, it is

ORDERED that defendants’ motion to reargue this court’s March 2024 rent-impairing violation determination is denied; and it is further

ORDERED that the branch of defendants’ motion to reargue this court’s March 2024 security-deposit determination is granted; and on reargument, summary judgment on the third counterclaim/twelfth affirmative defense is granted in defendants’ favor, with plaintiff to pay a judgment of \$500 (representing what plaintiff has retained of the security deposit) to Rachmut, with interest at the statutory rate running from June 15, 2023, plus costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is

ORDERED that plaintiff’s motion to renew is granted, and on renewal, summary judgment is granted, and the tenth affirmative defense/first counterclaim; the eleventh affirmative defense/second counterclaim; and the fourth counterclaim to the extent is alleged tenant harassment based on a failure to cure the rent-impairing violation are dismissed; and it is further

ORDERED that the balance of claims in this action is severed and shall continue; and it is further

ORDERED that defendants serve a copy of this order with notice of its entry on plaintiff and on the office of the County Clerk (using the NYSCEF document type "Notice to the County Clerk - CPLR § 8019 (c)"), which shall enter judgment accordingly.

1/14/2026
DATE


HON. GERALD LEBOVITS
J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE