

<b>Mulford v 56 Scarlett Assoc. LLC</b>
2026 NY Slip Op 31417(U)
April 7, 2026
Supreme Court, New York County
Docket Number: Index No. 655210/2025
Judge: Nicholas W. Moyne
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. NICHOLAS W. MOYNE PART 41M**

*Justice*

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MICHAEL MULFORD, LUCA CASTIGLIONE

Plaintiff,

- v -

56 SCARLETT ASSOCIATES LLC,

Defendant.

-----X

INDEX NO. 655210/2025

MOTION DATE 11/17/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9 were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, it is

Plaintiffs, Michael Mulford and Luca Castiglione, commenced the underlying action seeking to recover amounts owed by the defendant, 56 Scarlett Associates, LLC, pursuant to a violation of General Obligations Law § 7-108, representing amounts of the security deposit, punitive damages, interest, and attorneys’ fees incurred. In Motion Sequence 001, plaintiffs now move for an order, pursuant to CPLR § 3215, directing entry of a default judgment against defendant in the amount of \$12,600.00, consisting of \$4,200.00, the amount of the security deposit, plus \$8,400 in punitive damages for the willful withholding of a security deposit as permitted by the statute. For the reasons set forth below, the motion is denied.

Here, plaintiffs’ claims arise out of a residential lease agreement where, plaintiffs, as Tenants, leased a unit on the premises located at 401 West 56th St., New York, New York from defendant, Landlord, with the lease term expiring on March 31, 2025. Plaintiffs allege that in connection with this lease, plaintiffs provided Landlord with a security deposit in the amount of \$4,200.00. Plaintiffs contend that on March 31, 2025, Tenants inspected the premises with an

employee of Landlord, vacating the premises in accordance with the lease agreement and without damage. Plaintiffs assert that Landlord was required to return the security deposit within 14-days, on or before April 14, 2025, but failed to do so nor provided Tenants with an itemized statement or similar documents evidencing any damage, or costs of repair. Plaintiffs allege that the defendant, Landlord, violated General Obligations Law § 7-108, by failing to return the plaintiff's security deposit nor providing any itemization of costs by April 14, 2025, nor to date.

Accordingly, on or around September 2, 2025, plaintiffs commenced this action by filing copies of the summons and complaint and, on September 5, 2025, in accordance with Limited Liability Company Law § 303, serving the defendant with the commencement papers herein (NYSCEF Doc. No. 2). The applicable time period in which defendant ought to have answered or otherwise appeared has passed and the defendant has failed to do so. On November 17, 2025, within the statutory one-year period following the defendant's default in responding to the complaint, plaintiffs filed their application seeking entry of a default judgment (*see* CPLR § 3215 [a]).

CPLR § 3215(f) requires that a party seeking a default judgment shall submit proof of service of the summons and complaint, “proof of the facts constituting the claim, the default and the amount due” (*Rosenstein v Permanent Mission of the Republic of Sierra Leone to the United Nations*, 217 AD3d 553, 554 [1st Dept 2023]). While this burden of proof is not substantial (*see Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023]), “CPLR 3215 does not contemplate that default judgments are to be rubber stamped once jurisdiction and a failure to appear have been shown” (*Welz v Brown*, 228 AD3d 416, 418 [1st Dept 2024]). The movant may demonstrate proof of the facts constituting the claim and the amount due by submitting an affidavit made by

the party or verified complaint when properly served (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70 [2003]).

However, the plaintiffs have failed to establish proof of the facts constituting the claim or the amount due as the plaintiffs' submissions in support of the motion are insufficient. General Obligations Law ("GOL") 7-108 *et. seq.* governs deposits made by tenants of non-rent stabilized dwelling units. GOL § 7-108 (1-a) (b) requires that the entire amount of a non-regulated residential tenant's security deposit "shall" be returned to tenant, except for amounts lawfully retained for damage caused by the tenant beyond normal wear and tear (*14 E. 4th St. Unit 509 LLC v Toporek*, 203 AD3d 17, 25 [1st Dept 2022]). Further, GOL § 7-108 (1-a) (e) provides that a landlord forfeits its right to retain any portion of a security deposit if it does not, within 14 days after the tenant has vacated the premises, provide an itemized statement detailing the basis for retention of that portion and return any remaining portion of the deposit to the tenant (*Urban v Zipper*, 241 AD3d 1186, 1187 [1st Dept 2025]). Pursuant to GOL § 7-108 (1-a) (g), "[a]ny person who violates the provisions of this subdivision shall be liable for actual damages, provided a person found to have willfully violated this subdivision shall be liable for punitive damages of up to twice the amount of the deposit or advance".

Here, plaintiffs have failed to establish the facts constituting their GOL § 7-108 claim nor the amount claimed due as the plaintiffs' complaint was verified by their attorney (NYSCEF Doc. No. 1) and the only affidavit submitted in support of the application is that of plaintiffs' counsel (NYSCEF Doc. No. 4; *c.f. Whittemore v Yeo*, 117 AD3d 544, 545 [1st Dept 2014]). Further, while plaintiffs have offered the alleged lease agreement for the subject premises, this agreement has not been signed and/or executed by either the Tenants or Landlord (NYSCEF Doc. No. 5). Additionally, plaintiffs have not submitted proof establishing entitlement to the

amount they claim is due and owing as plaintiffs have not submitted evidence demonstrating payment of the security deposit in the amount claimed, \$4,200.00, or to substantiate any alleged instances of conduct for purposes of establishing entitlement to punitive damages. "A failure to submit the proof required by CPLR 3215(f) should lead a court to deny an application for a default judgment" (Manhattan Telecom. Corp. v H & A Locksmith, Inc., 21 NY3d 200, 203 [2013]), thus, plaintiffs' otherwise timely motion under CPLR § 3215 should be denied, but with leave to renew (231st Riverdale LLC v 7 Star Home Furniture Inc., 198 AD3d 524, 525 [1st Dept 2021]; Giordano v Berisha, 45 AD3d 416, 417 [1st Dept 2007]).

Accordingly, it is hereby

ORDERED that the plaintiffs' motion seeking entry of a default judgment against the defendant is DENIED, without prejudice to renew upon the submission of proper proof of both the facts constituting their claims and the amount due as required by CPLR § 3215 (f) within thirty (30) days of the date of this decision and order; and it is further

ORDERED that the failure to take such proceedings within the above-stated time period may result in dismissal of the plaintiffs' claims.

This constitutes the decision and order of the court.

  
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4/7/2026  
DATE

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NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE