

**Collins v Shaw**

2026 NY Slip Op 31747(U)

April 21, 2026

Supreme Court, New York County

Docket Number: Index No. 654353/2025

Judge: Phaedra F. Perry-Bond

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

-----X

CLINTON COLLINS, and REBECCA COLLINS

Plaintiffs,

- v -

RONALD SHAW,

Defendant.

-----X

INDEX NO. 654353/2025

MOTION DATE 10/24/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28

were read on this motion to/for DISMISSAL

Upon the foregoing documents, Defendant's motion to dismiss Plaintiff's Complaint pursuant to CPLR 3211(a)(1) and (a)(7) is denied.

I. Background

Defendant owns Unit 5CD in the condominium located at 217 East 7th Street New York, New York (the "Unit"). Defendant leased the Unit to Plaintiffs from April 15, 2024 until June 13, 2025. During Plaintiffs' tenancy, on or about the third week of April 2025, the Unit experienced a moth infestation. The infestation grew worse, and Plaintiffs were required to find temporary housing on May 16, 2025. Allegedly, moths were infesting Plaintiffs' clothing, furniture, dressers and drawers. The moths were allegedly causing holes in clothing and furniture, and the Unit was not fit for Plaintiffs' infant daughter born on November 21, 2024. According to Plaintiffs, Defendant allegedly knew about the prior infestations before Plaintiffs entered the lease.

Plaintiffs now sue Defendant for breach of lease, breach of the implied warranty of habitability, failure to return Plaintiffs' security deposit, and attorneys' fees. Defendant responds with a pre-answer motion to dismiss, arguing a moth infestation cannot give rise to a warranty of

habitability claim. Defendant also argues he was not given notice of the infestation and an opportunity to remediate the condition. Defendant asserts the breach of contract and breach of warranty of habitability claims are duplicative of one another, and that any damages beyond a rent abatement should be dismissed.

In opposition, Plaintiffs produced text messages showing Defendant was notified of the moth infestation. Defendant admits in those texts he knew of prior moth issues but that he believed it “was only a minimal problem” (NYSCEF Doc. 21). Defendant further stated moths “are not dangerous to people unless you happen to be allergic” and that “I was initially sympathetic, as it is a bit shocking, but on reflection don’t see how this is [his] fault.” Plaintiffs argue the breach of contract claim is not duplicative because the breach of the warranty of habitability rests upon the violation of a statute, specifically Real Property Law § 235-b. Plaintiffs further argue that damages should not be capped because the failure to return a security deposit in violation of General Obligations Law § 7-108 allows for punitive damages of up to twice the amount of the security deposit withheld. Finally, Plaintiffs argue whether the moth infestation was so severe as to constitute a breach of the warranty of habitability is a fact intensive inquiry which cannot be resolved on a pre-answer motion to dismiss.

## **II. Discussion**

### **A. Standard**

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court accepts all factual allegations as true, gives claimant the benefit of all favorable inferences which may be drawn from the pleadings, and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). A motion to dismiss based on documentary evidence is appropriately granted when the documentary

evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]).

### **B. Breach of Contract & Breach of the Warranty of Habitability**

Defendant's motion to dismiss the breach of contract and breach of warranty of habitability claims is denied. To allege breach of contract, there must be factual allegations showing the existence of an enforceable contract, the Plaintiff's performance, the Defendant's breach, and damages (*see Markov v Katt*, 176 AD3d 401 [1st Dept 2019]). Here, no party disputes the existence of a valid and enforceable contract, nor is there any dispute as to Plaintiffs' performance. Defendant disputes whether he breached the contract when his Unit, which he leased to Plaintiffs, became infested with moths. The lease expressly states that Defendant "agrees that the [Unit] is fit for human habitation and that there will be no conditions which will be detrimental to life, health or safety." However, in a text message by Defendant, he agreed that "exposing [Plaintiffs'] child concerning [*sic*] Sorry to not be much help" (NYSCEF Doc. 21). Considering Defendant himself purportedly agreed that the moth infestation and required exterminator treatments were "concerning" for Plaintiffs' newborn child and immediately apologized for "not be[ing] much help" there is at a minimum an issue of fact as to whether Defendant breached his promise to ensure "there will be no conditions...detrimental to life, health or safety." Therefore, the motion to dismiss the breach of contract claim is denied.

The motion to dismiss the breach of the warranty of habitability claim is also denied. This claim is not duplicative because it is grounded in statute (*see Real Property Law* § 235-b) as opposed to contract. Moreover, the damages under both claims are not identical. Consequential

damages are available under breach of contract while only rent abatement is available under Real Property Law § 235-b. While Defendant claims that he was not provided notice or sufficient time to cure, the text messages reflect Defendant was provided notice and when he said “[s]orry to not be much help” it appears he indicated an unwillingness to cure. In later text messages, Defendant wholly disclaimed responsibility, claiming “on reflection [I] don’t see how this is my fault.” At a minimum, it remains an issue of fact as to whether Defendant was even willing to cure the alleged breach.

Defendant’s argument that the moth infestation cannot give rise to a breach of warranty of habitability claim is unavailing at the pre-answer motion to dismiss stage. The Court of Appeals has stated Real Property Law § 235-b requires “tenants be provided with premises suitable for residential habitation, in other words, living quarters having ‘those essential functions which a residence is expected to provide’” (*see Solow v Wellner*, 86 NY2d 582, 589 [1995]). Bug and vermin infestations have been found to give rise to warranty of habitability claims (*see Berg v Chelsea Hotel Owner, LLC*, 203 AD3d 484 [1st Dept 2022] [rat and vermin infestations were not mere annoyances but affected health, safety or welfare of residents of building]; *J.H. v 1288 LLC*, 171 AD3d 549 [1st Dept 2019] [allowing for third-party indemnification and contribution claims arising from breach of warranty of habitability based on bed bugs]; *see also Ludlow Properties, LLC v Young*, 4 Misc.3d 515 [Civ. Ct., New York County 2004]).

Considering the Court of Appeals’ statutory interpretation of Real Property Law § 235-b, and considering prior precedent’s application of Real Property Law § 235-b to conditions arising from bug and vermin infestations, the Court finds Plaintiffs’ allegations give rise to a breach of the warranty of habitability claim. Accepting the allegations as true, the Unit was inundated by moths, which were infesting Plaintiffs’ clothing, furniture, closets, dressers, and drawers, and

which were laying eggs and causing holes in clothing and furniture. Any reasonable person would find these conditions not fit to live in, but the Unit was especially rendered unfit considering Plaintiffs were raising their newborn child in the Unit. Therefore, the breach of the warranty of habitability claim survives. “[I]f defendant[‘s] acts or inaction are shown to be intentional and malicious, the allegations could support an award of punitive damages” (*see Berg v Chelsea Hotel Owner, LLC*, 203 AD3d 484 [1st Dept 2022]).

### C. Security Deposit

The motion to dismiss Plaintiffs’ cause of action for failure to return their security deposit in violation of General Obligations Law § 7-108 is denied. Defendant’s own submissions show that he still retains the security deposit and apparently only offered to return it in October of 2025, several months after the commencement of this lawsuit (*see* NYSCEF Doc. 27). However, the security deposit was required to be returned within 14 days after the tenants vacated the premises (*see Urban v Zipper*, 241 AD3d 1186, 1187 [1st Dept 2025]). Defendant’s belated offer to return the security deposit is insufficient to succeed on this pre-answer motion to dismiss.

Accordingly, it is hereby,

ORDERED that Defendant’s motion to dismiss is denied in its entirety, and within twenty days of entry, Defendant shall serve an Answer to Plaintiffs’ Complaint; and it is further

ORDERED that the parties shall meet and confer and submit a proposed preliminary conference order to the Court no later than May 26, 2026. If the parties have a serious discovery dispute requiring a conference, they shall notify the Court so an in-person conference can be scheduled; and it is further

ORDERED that if the parties seek to resolve this matter through the Court's sponsored ADR program, the parties shall notify the Court so the appropriate referral order may be issued; and it is further

ORDERED that within ten days of entry, counsel for Plaintiffs shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

4/21/26  
DATE

[Signature]  
HON. PHAEDRA F. PERRY-BOND, 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