Barrett v F.E. Nadal Corp.
2026 NY Slip Op 32071(U)
April 28, 2026
Supreme Court, New York County
Docket Number: Index No. 165742/2025
Judge: Gerald Lebovits

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

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NICHOLAS BARRETT,

Plaintiff,

- v -

F.E. NADAL CORPORATION,

Defendant.

---X

INDEX NO. 165742/2025

MOTION DATE 03/13/2026

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion for DISMISSAL.

The Price Law Firm, LLC, Melville, NY (Joshua C. Price of counsel), for plaintiff.
Anderson Law PLLC, New York, NY (Gregory Byrnes of counsel), for defendant.

Gerald Lebovits, J.:

In this rent-overcharge action, defendant, F.E. Nadal Corporation, moves under CPLR 3211 (a) (1), (5), and (7) to dismiss the complaint of plaintiff, Nicholas Barrett.

BACKGROUND

Plaintiff is the current tenant of Apartment 35 in a pre-1974, seven-story, multi-unit building in New York City, that was historically subject to the Rent Stabilization Law (RSL). The apartment was registered as rent-stabilized from at least 1993 through 2007, with the last registered rent-stabilized tenant (Tamara Campbell) vacating in 2007 at a legal regulated rent of $1,184.42 a month. In 2008, defendant registered the apartment as "exempt / PE [permanently exempt] / high-rent vacancy." Defendant asserted that after applying vacancy and longevity increases and individual apartment improvements (IAIs), the legal rent exceeded the $2,000 deregulation threshold. Plaintiff alleges that no substantial renovations were performed, that no Department of Buildings permits were filed, and that Apartment 35's condition is inconsistent with the claimed $30,000 in IAIs.

Defendant submits a check history, some invoices, and a vacancy rent calculation form to substantiate the IAIs but acknowledges that not all original documentation is available due to the passage of time.

Plaintiff brought this action in December 2025. Plaintiff's first cause of action seeks a declaration that he is a rent-stabilized tenant entitled to the benefits of, and a lease renewal consistent with, the Rent Stabilization Law. His second cause of action seeks compensatory and treble damages for defendant's alleged rent overcharge, in the amount of at least $125,000. Plaintiff's third cause of action is for damages for breach of the warranty of habitability. And his fourth cause of action seeks an award of attorney fees under the lease.

Defendant moves to dismiss the complaint for failure to state a cause of action, as barred by documentary evidence, and as barred by the statute of limitations. The motion is denied.

DISCUSSION

I. Fraudulent Deregulation and Rent Overcharge

The current standard for pleading a colorable claim of fraudulent deregulation under the Rent Stabilization Law is set by *Burrows v 75-25 153rd St., LLC* (215 AD3d 105, 108 [1st Dept 2023]), and the 2023/2024 chapter amendments (L 2023, ch 760, as amended by L 2024, ch 95, § 4). Under this authority, a plaintiff need not plead every element of common-law fraud, but must allege sufficient indicia of a fraudulent scheme to deregulate, based on the totality of the circumstances. (*310 E. 74 LLC v Mirea*, 226 AD3d 547, 547-548 [1st Dept 2024].) A substantial rent increase alone, or a tenant's skepticism about whether IAIs were made, is insufficient; factual allegations must support a fraudulent scheme. (*See Cain v 42 W. 65th LLC*, 231 AD3d 469, 469-470 [1st Dept 2024]; *Gourin v 72A Realty Assoc., L.P.*, 226 AD3d 475, 476-477 [1st Dept 2024].)

Plaintiff alleges that the deregulation of his apartment was fraudulent because (i) the rent increase from $1,184.42 to over $2,000 in 2007/2008 would have required substantial IAIs; (ii) no Department of Buildings permits or reliable documentation exist for such work; (iii) the apartment's condition is inconsistent with recent renovations; and (iv) the apartment was not registered with Division of Housing and Community Renewal (DHCR) for over a decade. In seeking dismissal, defendant contends that plaintiff's allegations are merely speculative; and that its claimed basis for deregulation is supported by a check history, some invoices, and a vacancy rent calculation. Defendant's contentions are unpersuasive at this stage of the litigation.

Plaintiff's allegations go beyond mere skepticism: He points to the absence of Department of Buildings permits, DHCR registrations, or reliable third-party documentation; and to the apartment's physical condition—all in the context of a 100% rent increase. These allegations are sufficient to state a cause of action.

In seeking dismissal, defendant relies on prior leases (and rent increases) and defendant's own self-prepared vacancy-rent calculations. But these leases "showed only what the apartment's former tenants actually paid, not what they should have paid." (*Nadler v Carmine Limited*, 231 AD3d 485, 486 [1st Dept 2024] [reversing the grant of summary judgment to landlord].)

Defendant also contends that it properly calculated permissible rent increases based on IAIs. But the evidence that defendant relies on (a check register, checks, and two sets of invoices) does not conclusively refute plaintiff's claims, as required to support dismissal under CPLR 3211 (a) (1). Even assuming that the authenticity and import of defendant's proffered check register and checks is undeniable for "documentary evidence" purposes (*see* NYSCEF Nos. 25, 26), those documents do not themselves establish whether the evidenced payments by defendant were for improvements, repairs, or some other purpose.

It is unclear to this court whether the invoices—which consist solely of typed-out pieces of paper without any contemporaneous markings—can qualify as documentary evidence within the meaning of CPLR 3211 (a) (1). Even assuming that they do qualify, these invoices do not conclusively refute plaintiff's claims. Without greater detail, it is unclear from the face of the invoices whether the work that they reference constitutes "improvements" to the premises. Defendant's principal's affidavit arguably suggests that they do (*see* NYSCEF No. 24 at ¶ 6); but that affidavit cannot supply omissions in the documents themselves on a CPLR 3211 (a) (1) motion. Additionally, the affidavit and the invoices contradict each other at points: For example, the affidavit states that "the apartment was renovated with "new tile floors" in the kitchen. (*Id.*) But one of the invoices refers to "install[ing] *vinyl* kitchen floor" and "ceramic tiles" in the bathroom, rather than a tile floor in the kitchen. (NYSCEF No. 27 at 2 [emphasis added].) Further, even if one were to assume that every dollar of the invoiced work constitutes an IAI that would support a corresponding rent increase, the amount of that increase would still fall short of the amount by which defendant actually raised the rent in 2007/2008.

The court denies the motion to dismiss the first (declaratory judgment/regulatory status) and second (overcharge) causes of action. Plaintiff has pleaded sufficient indicia of a fraudulent scheme to deregulate to warrant discovery and further factual development, and defendant's evidence does not utterly refute plaintiff's claims as a matter of law.

II. The Statute of Limitations

Rent overcharge claims are subject to a four-year lookback (CPLR 213-a; RSL § 26-516 [a]); but the court may look beyond four years if there are substantial indicia of fraud. (*Matter of Watson v New York State Div. Hous. & Community Renewal*, 109 AD3d 833, 834 [2d Dept 2013].) Challenges to the regulatory status of apartments are not subject to a limitations period: A tenant may challenge deregulation at any time, regardless of when the change occurred. (*Mautner-Glick Corp. v Higgins*, 64 Misc 3d 16, 19 [App Term, 1st Dept 2019].)

Plaintiff's overcharge claim is based on alleged fraud and is within six years of his own tenancy (commenced in 2022); and the fraud exception permits review of the full history. Defendant's argument that the claim is time-barred fails. Plaintiff alleges a fraudulent scheme and is not seeking to recover the amount of alleged overcharges from before his own tenancy.

The court denies dismissal on statute of limitations grounds for both regulatory status and overcharge claims.

III. The Warranty of Habitability

RPL § 235-b provides for a warranty of habitability in residential leases; a claim requires allegations of conditions materially affecting health/safety, notice of such allegations to be sent to landlord, and failure to cure. (*Park W. Mgt. Corp. v Mitchell*, 47 NY2d 316, 328 [1979]; *Kent v 534 E. 11th St.*, 80 AD3d 106, 112-113 [1st Dept 2010].)

Plaintiff alleges specific conditions, such as water stains, potential mold, buckling floors, chipped paint and lack of heat, and asserts that he notified defendant of these allegations, and that defendant failed to cure them. Defendant argues that the allegations are vague, conclusory, and unsupported by evidence of severity, duration, or their notice.

At the pleading stage, a court should accept plaintiff's factual allegations as true and draw all inferences in his favor. (*Farage v Associated Ins. Mgt. Corp.*, 43 NY3d 152, 158 [2024].) Plaintiff alleges specific, ongoing conditions affecting health and safety, and avers that he notified defendant of their presence. These allegations are sufficient to state a claim under RPL § 235-b. (*See Park W. Mgt. Corp.*, 47 NY2d at 328; *Kent*, 80 AD3d at 112-113.) Defendant's arguments regarding lack of severity or notice raise factual issues not suitable for resolution on a motion to dismiss.

IV. Attorney Fees

RPL § 234 provides for reciprocal attorney fees when a lease allows the landlord to recover fees; a tenant must be the prevailing party to recover. (*Pei-De Tsai v JCHHB, Inc.*, 233 AD3d 420, 421 [1st Dept 2024]; *Sandlow v 305 Riverside Corp.*, 201 AD3d 418, 421 [1st Dept 2022].)

Plaintiff seeks attorney fees under RPL § 234, relying on the lease provision that permits the landlord to recover attorney fees in actions arising out of the lease, as the prevailing party. Defendant argues that plaintiff is not yet a prevailing party and that the claim is premature because no substantive relief has been granted and the merits of plaintiff's claims have not yet been adjudicated.

Plaintiff's entitlement to fees cannot be determined until the merits of the underlying claims for declaratory judgment, damages, and abatement are adjudicated. The claim is not subject to dismissal at the pleading stage.

Accordingly, it is

ORDERED that defendant's motion to dismiss is denied in its entirety; and it is further

ORDERED that the parties shall appear before this court for a telephonic preliminary conference on May 29, 2026.

4/28/2026
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