Vermont Superior Court
Filed 11/18/26
Franklin Unit

VERMONT SUPERIOR COURT
Franklin Unit
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CIVIL DIVISION
Case No. 26-CV-03130

Thomas Cavanaugh, Administrator of the Estate of Ronald Cavanaugh v. Michele Paradee et al

RULING ON MOTION FOR RENT ESCROW, ORAL MOTION TO DISMISS, AND MOTION TO AMEND

This matter is before the Court on Plaintiff's motion for a rent escrow order, Defendants' oral motion to dismiss made at the rent escrow hearing in this matter on August 25, 2026, and Plaintiff's motion to amend his complaint.

As explained further below, the Court denies the motions for rent escrow and to dismiss and grants the motion to amend.

Procedural Background

The Cout held a rent escrow hearing on August 25, 2026. Legal Services of Vermont entered a limited notice of appearance on behalf of Defendants at that hearing. Defendants orally moved to dismiss the case at the hearing and opposed the motion for rent escrow based on the lack of an appropriately filed CARES Act certificate and the failure of Plaintiff, Thomas Cavanaugh, as administrator of the Estate of Ronald Cavanaugh ("Mr. Cavanaugh"), to properly provide notice of termination of the tenancy to Defendants Michele Paradee and Charles Pidgeon prior to filing this lawsuit. *See* 9 V.S.A. § 4468.

The Court denied the request to dismiss based on the CARES Act under Rule 9.2 on the record but permitted the parties to present evidence on whether Defendants' tenancy was properly terminated at the rent escrow hearing. Plaintiff opposed this, arguing that this is improper at a rent escrow hearing.

There was no evidence presented at the hearing that contradicted Plaintiff's assertion that Defendants owed rent and had not paid it.

After considering the evidence, the Court made findings on the record to establish that Plaintiff had presented evidence to create a rebuttable presumption that the notices were received three days after mailing, but that Defendants had presented sufficient evidence to rebut the presumption, and Plaintiff had no other evidence to present. The Court allowed Plaintiff to submit further legal argument.

Plaintiff filed his opposition on September 25, 2026, and filed a motion to amend the complaint on September 28, 2026, to add a second claim for eviction based on non-payment of

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rent. Defendants filed their opposition to the motion to amend and reply in support of the motion to dismiss on October 15, 2026, and no reply was filed in support of the motion to amend.

Analysis

The crux of Defendants' motion to dismiss and their opposition to the request for rent escrow is that this case cannot move forward because Mr. Cavanaugh cannot prove he properly terminated Defendants' tenancy. They rely on *Andrus v. Dunbar* and various Superior Court decisions for this proposition: "The ejectment statute allows an action for possession where the former lessee 'holds possession of the demised premises without right, after the termination of the lease.'" 2005 VT 48, ¶ 10 (quoting 12 V.S.A. § 4851).

This is a correct statement of Vermont ejectment law and is the starting point of the Court's analysis. Some, but not all, Superior Courts have applied this language to mean that a rent escrow order cannot be issued unless a landlord can show that he properly terminated a tenant's tenancy prior to filing suit.

Here, there are two motions – one for rent escrow and one to dismiss. Each motion has its own burdens and requirements, and the Court will address them separately.

Plaintiff makes several arguments in support of his own motion for rent escrow and in opposition to Defendants' motion to dismiss. The Court does not address them all here but addresses them sufficiently to explain its conclusions.

First, Plaintiff argues that by requiring a landlord to prove that he properly terminated the tenancy of a tenant prior to receiving a rent escrow order, the Court is reading an additional requirement into the rent escrow statute. As correctly noted by Mr. Cavanaugh, the rent escrow statute itself only contains two explicit requirements to receive a rent escrow order: that rent is owed and has not been paid. 12 V.S.A. § 4853a.

However, Plaintiff's analysis in his Opposition undercuts his argument. In subsection (a),[1] the rent escrow statute requires that the ejectment or eviction action be brought "in accordance with . . . 9 V.S.A. chapter 137 [the Residential Rental Agreements Act]." *Id.* Plaintiff brushes away the "in accordance" language by stating that it could not have been intended to add any requirements to the rent escrow statute. He does not cite any authority for this bold assertion – that language in a statute is not intended to add meaning. The Court disagrees with this analysis.

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[1] There are two subsections labeled (a) with similar but not identical language. One was added by the legislature on May 8, 2008, to expand the rent escrow statute to commercial properties with ejectment cases brought under Title 12. *See* 2007, Adj. Sess., No. 125, § 1 (titled "An Act Relating To Permitting Payment Of Rent Into Court Pursuant To A Commercial Lease"). The other was added May 28, 2008, as part of a law that more generally addressed landlord/tenant issues. 2007, Adj. Sess., No. 176, § 51 (titled "An Act Relating To … Landlord–Tenant Relations …."). The Court relies on the latter added language because it addresses residential leases.

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This Court has consistently declined to issue a rent escrow order if the landlord cannot carry his burden to establish at the rent escrow phase that the tenancy was properly terminated. The Court understands that there is a split in authority among the Superior Courts in Vermont on this issue. However, from this Court's perspective, it would make no sense that a landlord could utterly fail to properly terminate a tenancy (for example, by providing no notice to the tenant at all), file an ejectment action under Title 12, seek a rent escrow order because rent is owing and has not been received, and then receive a writ of possession if a tenant cannot timely make the first rent escrow payment that is sometimes 2-3 times the typical rent amount. Read as a whole, this is not the intent of the ejectment statute and the requirements of the Residential Rental Agreements Act ("RRAA") that are incorporated into Title 12 by reference.

To be clear, the Court is not relying on the "absurd results" exception. *See, e.g.*, *Billewicz v. Town of Fair Haven*, 2021 VT 20, ¶ 28, 214 Vt. 511. It is relying on the Legislature's choice to state that the rent escrow statute applies "[i]n any action against a tenant for possession brought in accordance with" the RRAA. 12 V.S.A. § 4853a. One does not have to dive deeply into the RRAA to divine how an action for possession is brought – there is a section that addresses it directly titled "Termination of tenancy; action for possession." 9 V.S.A. § 4468. It states: "If the tenant remains in possession after termination of the rental agreement without the express consent of the landlord, the landlord may bring an action for possession, damages, and costs under 12 V.S.A. chapter 169, subchapter 3." *Id.* The Court's interpretation is based on the plain language of section 4853a and the statutes it cites. *See* Opp'n to Defs.' Mot. Relief (filed 9/25/2026) at 4 ("The plain meaning of 12 V.S.A. § 4853a is unambiguous and must be enforced as written.").

While the Court does not necessarily consider the question of proper termination of the tenancy as a subject matter jurisdiction issue – and such a determination is not necessary for its decision in this case – it is certainly an element of the landlord's burden at the rent escrow phase. In other words, in addition to proving that (1) rent is owed and (2) has not been paid, a landlord must show that (3) his case has been properly placed before the court. From the Court's perspective, as it relates to the facts presented in this case, this includes the proper filing of a CARES Act certificate and proof of termination of the tenancy within the appropriate time prior to filing the ejectment action.

Mr. Cavanaugh's argument that the rent escrow hearing is generally not the time for motions to dismiss or summary judgment is likewise not correct. The motions are timely under the rules and can be appropriate procedural mechanisms for challenging a landlord's claim. They must be considered on their own merits. In certain circumstances, the Court must consider those motions before issuing a rent escrow order that could end the case. For example, if a notice of termination were on its face insufficient to terminate a tenancy because it gave only five days' notice, a motion under V.R.C.P. 12(b)(6) would be appropriate at the rent escrow phase.

Plaintiff's next argument is that the Court should not accept any of Defendants' arguments because they were not raised in advance of the hearing. This argument is based on section 4853a(c), which provides that any opposition that is filed must be accompanied by an

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affidavit. He also relies on Rule 7(b)(6) to argue that Defendants were required to identify their intention to present evidence at the hearing.

The Court rejects these arguments for two reasons. First, as it relates to the Rule 7(b)(6) argument, a rent escrow hearing is an evidentiary hearing. Plaintiff should anticipate that he needs to present sufficient evidence to meet his burden. Relatedly, nothing in the rent escrow statute or the rules requires the filing of an opposition. The Court is not permitted to rule on a motion for rent escrow on the papers – it is required by the statute to hold a hearing. If no opposition is required but a hearing is, it stands to reason that the parties may come to the hearing prepared to litigate the elements of the motion. If the Legislature had wanted the Court to grant the motion if no opposition is filed, it would have said so.

Second, the timeline for the opposition and the hearing is identical – fourteen days. As a result, even if an opposition were prefiled, it would not leave any time for that opposition to realistically provide notice to the parties or frame the issues. Any reading of the rules or statute that precluded Defendants from presenting any defense at the hearing would run afoul of V.R.C.P. 1 (requiring courts to read the Civil Rules "to secure the just, speedy, and inexpensive determination of every action"). A tenant appearing at a rent escrow hearing may have not had an opportunity to consult a lawyer or to file an opposition in advance of the hearing. It is possible the tenant cannot read or write sufficiently to file such a motion. Denying that tenant the ability to put on any evidence would be fundamentally unjust. Plaintiffs must be prepared to prove their entitlement to a rent escrow order – including that the tenancy was properly terminated or ask for a continuance if they need more time to do so.

The procedural argument also fails in this case as it relates to the rent escrow hearing because Plaintiff did not ask for a continuance of the rent escrow hearing. Plaintiff had the opportunity to question Defendants and challenge their evidence. He did not ask the Court for a continuance to allow him to come back on a separate day to further pursue his motion. As a result, he waived any objection on the basis of procedural fairness. *Cf. Zinn v. Tobin Packing Co.*, 140 Vt. 410, 413 (1981) ("At the time the defendant was first surprised by the proposed testimony of the plaintiff's expert, defendant should have requested a continuance and failure to do so waived any rights based thereon.").

Mr. Cavanaugh spends the last four pages of his brief attacking the credibility of Defendants Michelle Paradee and Charles Pidgeon. He points to Defendants' actions in a prior eviction case he filed against them. The time for those attacks was at the hearing. At the hearing, Plaintiff did not present any evidence about what had happened in the prior eviction case. He did not cross-examine Defendants extensively about what happened in those preior cases. Nor did he prove any pattern that undercuts Defendants' credibility when they state they did not receive the notice of termination. The Court does not consider those arguments on the papers here. *See Havill v. Woodstock Soapstone Co.*, 2004 VT 73, ¶ 21, 177 Vt. 297 ("Indicia of untruthfulness appear more readily in person than they do in the cold appellate record; thus the fact-finder's credibility determination is due great deference because it is based on the trial court's observation of the witnesses as they testified.").

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The issue in dispute at the rent escrow hearing was whether Plaintiff proved that he provided Defendants with "actual notice" of the notice to terminate their tenancy. To be clear, the statute requires actual notice, not constructive notice. This means it is Plaintiff's burden to prove that Defendants received written notice of termination. 9 V.S.A. § 4451(1). It is not enough to prove it was sent. *In re Soon Kwon*, 2011 VT 26, ¶ 18, 189 Vt. 598 ("The Legislature adopted a more narrow definition of what can constitute actual notice."). This statutory language – requiring actual receipt – makes the various Second Circuit cases cited by Plaintiff unpersuasive. None of those cases were interpreting a statute that requires proof of receipt.

Section 4451(1), which defines "actual notice," creates a rebuttable presumption that a mailed notice is received three days after it is sent by first class or certified mail. A landlord can also hand deliver a notice, but this did not occur here. The date of mailing was established by Plaintiff as April 25, 2026. This creates a rebuttable presumption that it was received by Defendants on April 28, 2026. This would have been sufficiently in advance of the May 13, 2026, termination date to properly terminate the tenancy for nonpayment of rent.

However, Defendants sufficiently rebutted this evidence by stating they did not receive the notice. While Plaintiff complained at the hearing and in his opposition that there was no other evidence to support Defendants' assertion, the Court does not require that and declines to adopt a rule that additional evidence is needed to support a tenant's testimony in all cases. The Court found Defendants to be credible.

The burden then shifted to Plaintiff to present evidence that Defendants did in fact actually receive the notice. *Cf. Rocque v. Coop. Fire Ins. Ass'n of Vermont*, 140 Vt. 321, 325-26 (1981) ("Under Vermont law the effect of … a presumption is to place the burden of going forward with evidence on the party against whom it operates, but the presumption itself is without any independent probative value. When any evidence is introduced from which facts to the contrary may be found, the presumption disappears and is wholly without effect."). This could have been done by showing a later communication with Defendants confirming receipt of the document, by pointing to some act Defendants took in response to having received the notice to terminate, or pointing to a statement Defendants made to someone else about having received the notice.

As noted above, one of Mr. Cavanaugh's arguments attempting to undercut the credibility of Defendants is that he previously filed an eviction case against them, and they also claimed in that case that they did not receive the notice. This argument cuts both ways – once Mr. Cavanaugh was on notice of this possibility, he could have used alternative methods to prove service – hand delivery, use of tracked mail delivery that does not require someone to sign for it simultaneous with first class mail, or sheriff's service. He also could have e-mailed his tenants to confirm receipt. In the end, Plaintiff did not take any of these actions and failed to meet his burden to prove actual notice at the rent escrow phase. He did not have any evidence at this phase of the case to rebut Defendants' testimony that they did not receive the documents.

As a result, Mr. Cavanaugh failed to prove that he is entitled to a rent escrow order as of August 25, 2026.

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The Court next turns to the motion to dismiss. Defendants do not identify in their filings precisely which part of Rule 12(b) they are relying on in seeking dismissal. Plaintiff persuasively argues that the issue in this case is not subject matter jurisdiction and that dismissal is improper under Rule 12(b)(6) because on its face the notice to terminate is valid and provides sufficient notice. Mr. Cavanaugh also argues that the Court would have to weigh evidence that was presented outside of the pleading at this point in time in deciding whether notice was proper. More importantly, Mr. Cavanaugh correctly argues that the Court cannot consider disputed facts as part of a motion to dismiss or a motion for summary judgment.

As a result, the motion to dismiss is denied because, as pled, the complaint and its attachments state a claim upon which relief can be granted on their face.

Turning to the motion to amend, the Court grants the motion to amend as a matter of course. Defendants' only opposition to the motion to amend was that a complaint that failed to state a claim could not be amended because it should not have been filed in the first place. Because the Court did not dismiss the case, this argument fails. Plaintiff is able to amend his complaint at any time because Defendants have not yet filed an answer.

Pursuant to Rule 79.1(h), the Court permits Attorney Fanning to withdraw from the case as of the date of this order.

ORDER

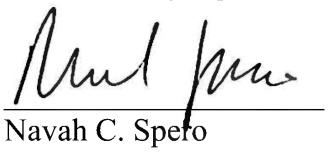
The motion for rent escrow is denied.

The motion to dismiss is denied.

The motion to amend is granted. Plaintiff has 14 days to file an amended complaint and exhibits on the docket and serve the documents consistent with Rule 5. Defendants have 14 days from the date of service to file an answer in this case.

The Court will set at status conference in 45 days, and that status conference may be cancelled if Defendants fail to file an answer and a motion for default judgment is pending.

Electronically signed on November 16, 2026, pursuant to V.R.E.F. 9(d).



Navah C. Spero
Superior Court Judge