WATERBURY TWIN, LLC, ET AL. *v.* RENAL TREATMENT CENTERS–NORTHEAST, INC., ET AL.
(SC 18218)

Rogers, C. J., and Norcott, Palmer, Vertefeuille and Zarella, Js.

Argued February 10—officially released July 14, 2009

Houston Putnam Lowry, with whom was *Julie A. Morgan*, for the appellants (plaintiffs).

John F. Conway, with whom was *W. Glen Pierson*, for the appellees (defendants).

Opinion

NORCOTT, J. The dispositive issue in this appeal is whether a landlord, after withdrawing its complaint in a summary process action, is required to serve a new notice to quit pursuant to General Statutes § 47a-23[1] prior to filing a new summary process action against its tenant. The plaintiffs, Waterbury Twin, LLC, and 150 MH, LLC, appeal[2] from the judgment of the trial court dismissing their summary process action against the defendants, Renal Treatment Centers–Northeast, Inc. (Renal Treatment Centers), and Davita, Inc. (Davita).[3] Because we conclude that the plaintiffs' withdrawal of the initial summary process action required them to serve a new notice to quit prior to commencing a new summary process action against the defendants, we affirm the judgment of the trial court.

The record reveals the following facts and procedural history. In August, 2007, the parties entered into a written agreement whereby the plaintiffs agreed to lease commercial premises in Waterbury to the defendants for ten years. Renal Treatment Centers entered into possession of the premises on August 30, 2007, and has been in possession since.[4] The plaintiffs allege that the defendants have failed to pay common area maintenance charges when due, or within any applicable grace period from October, 2007, through January, 2008, and also have caused various damages to the utilities on the premises during the construction process. On January 18, 2008, the plaintiffs caused a notice to quit for the nonpayment of rent to be served on the defendants, directing them to vacate the premises on or before January 23, 2008.[5] The notice to quit was served on January 19, 2008. The defendants, however, have refused to vacate the premises.

On January 31, 2008, the plaintiffs served the defendants with a summary process complaint (initial complaint) with a return date of February 7, 2008, which the marshal returned to the court on February 5, 2008. On February 11, 2008, the defendants moved to dismiss the initial complaint, contending that it violated General Statutes § 47a-23a[6] of the summary process statutes because it had not been returned to court at least three days before the return day. On February 15, 2008, the plaintiffs withdrew the initial complaint.

The following day, February 16, 2008, the plaintiffs commenced this summary process action by issuing a new summary process complaint (new complaint) with a return date of March 4, 2008, which was served on February 25, 2008, and returned to the court on February 26, 2008. The plaintiffs did not serve a new notice to quit prior to issuing the new complaint in this action. Thereafter, on February 27, 2008, the defendants notified the plaintiffs by letter that they had assumed that the notice to quit had been withdrawn and the lease

had been reinstated. Additionally, they enclosed a rent check for the month of March, 2008.[7]

The plaintiffs thereafter acknowledged receiving the rent check, but informed the defendants that the notice to quit had not been withdrawn and that the lease would not be reinstated. The plaintiffs accepted the check, but applied it to the damages owed by the defendants.

The defendants then moved to dismiss this action for lack of subject matter jurisdiction, claiming that the plaintiffs, after withdrawing the initial complaint, were required to serve a new notice to quit prior to commencing this summary process action. The trial court, relying on the Appellate Court's decision in *Housing Authority* v. *Hird*, 13 Conn. App. 150, 156–57, 535 A.2d 377, cert. denied, 209 Conn. 825, 552 A.2d 433 (1988), concluded that the plaintiffs' withdrawal of the initial complaint had revived the lease by returning the parties to "square one," namely, "the status quo prior to the service of the notice to quit." The trial court concluded, therefore, that the plaintiffs were required to serve a new notice to quit prior to commencing the current action. The trial court further stated, in dicta, that the notice to quit was itself invalid, notwithstanding the fact that it "tracked" the language of § 47a-23, because it failed to provide adequate notice as to which moneys were due, specifically, base rent or additional rent. Accordingly, the trial court granted the defendants' motion to dismiss and rendered judgment dismissing the new complaint. This appeal followed.

On appeal, the plaintiffs claim that the trial court improperly concluded that the withdrawal of a summary process action automatically withdraws the underlying, otherwise valid, notice to quit, thus restoring the written lease and requiring the landlord to serve a new notice to quit prior to filing a second summary process action.[8] The plaintiffs argue that serving a new notice to quit does not promote judicial economy, and rely on a line of trial court cases holding that a subsequent summary process action may be maintained using a previously served, otherwise valid notice to quit.[9] The plaintiffs further contend that the Appellate Court's decisions in *Housing Authority* v. *Hird*, supra, 13 Conn. App. 150, and *Bridgeport* v. *Barbour-Daniel Electronics*, *Inc.*, 16 Conn. App. 574, 548 A.2d 744, cert. denied, 209 Conn. 826, 552 A.2d 432 (1988), are not controlling in the present case because they involved facially defective notices to quit. In response, the defendants argue that, under *Hird*, the withdrawal of the prior summary process action had the effect of restoring the parties' written lease, thereby requiring the landlord to a serve a new notice to quit prior to commencing a new summary process action. The defendants rely on a trial court decision emphasizing the promotion of judicial economy by this bright line rule,[10] and note that the plaintiffs could have either amended their defective return date

rather than withdrawing the initial complaint, or simply served a new notice to quit. The defendants also posit that permitting a notice to quit to survive the withdrawal of the summary process action would create uncertainty in the subsequent landlord-tenant relationship, should such proceedings not immediately be reinstituted. We agree with the defendants and conclude that, if a landlord has withdrawn a summary process action filed against a tenant, the landlord is required to serve a new notice to quit pursuant to § 47a-23 prior to commencing another summary process action against that tenant under § 47a-23a.

"Summary process is a special statutory procedure designed to provide an expeditious remedy. . . . It enable[s] landlords to obtain possession of leased premises without suffering the delay, loss and expense to which, under the common-law actions, they might be subjected by tenants wrongfully holding over their terms. . . .

"Summary process statutes secure a prompt hearing and final determination. . . . Therefore, the statutes relating to summary process must be narrowly construed and strictly followed." (Citations omitted; internal quotation marks omitted.) *Young* v. *Young*, 249 Conn. 482, 487–88, 733 A.2d 835 (1999).

Service of a valid notice to quit, which terminates the lease and creates a tenancy at sufferance;[11] *Bargain Mart, Inc.* v. *Lipkis*, 212 Conn. 120, 134, 561 A.2d 1365 (1989); "is a condition precedent to a summary process action" under § 47a-23 that implicates the trial court's subject matter jurisdiction over that action. *Bristol* v. *Ocean State Job Lot Stores of Connecticut, Inc.*, 284 Conn. 1, 5, 931 A.2d 837 (2007); id. ("defective" notice to quit deprives court of subject matter jurisdiction); see also, e.g., *Lampasona* v. *Jacobs*, 209 Conn. 724, 728–29, 553 A.2d 175 (same), cert. denied, 492 U.S. 919, 109 S. Ct. 3244, 106 L. Ed. 2d 590 (1989). Thus, the defendants' "motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . [O]ur review of the court's ultimate legal conclusion and resulting [determination] of the motion to dismiss [is] de novo." (Internal quotation marks omitted.) *R.C. Equity Group, LLC* v. *Zoning Commission*, 285 Conn. 240, 248, 939 A.2d 1122 (2008).

Our analysis of the plaintiffs' claims begins with the Appellate Court's decision in *Housing Authority* v. *Hird*, supra, 13 Conn. App. 150. In *Hird*, a landlord initially had sought to evict a tenant for violating certain lease terms governing pets and apartment conditions. Id., 152–53. In July, 1985, the landlord served a notice to quit and then initiated a summary process action

that was resolved on its merits in the tenant's favor on November 6, 1985. Id., 153. The landlord then served a second notice to quit on the tenant on November 15, 1985, alleging that the tenant had failed to pay rent for November, and thereafter instituted another summary process action. Id. The landlord withdrew the second summary process action on January 29, 1986, in response to the tenant's motion to dismiss alleging that the landlord had failed to comply with applicable federal regulations. Id. The landlord refused the efforts of the tenant to restore her tenancy, and filed a third notice to quit on January 31, 1986, alleging that the tenant had failed to pay rent for January, which was followed by a summary process action shortly thereafter. Id., 154.

The Appellate Court first concluded that the tenant was "a tenant at will" in January, 1986, because the judgment in her favor on the merits in the first summary process action "had 'revived' the original lease arrangement," thus obligating her to pay rent to the landlord.[12] Id., 155. The court further concluded that the lease also had survived the landlord's withdrawal of the second summary process action on January 29, 1986, because "[t]he right of [the landlord] to withdraw his action before a hearing on the merits, as allowed by [General Statutes] § 52-80,[13] is absolute and unconditional. Under our law, the effect of a withdrawal, so far as the pendency of the action is concerned, is strictly analogous to that presented after the rendition of a final judgment or the erasure of a case from the docket. . . . The withdrawal of the summary process action on January 29, 1986, effectively erased the court slate clean as though the eviction predicated on the November 15, 1985 notice to quit possession had never been commenced. *The* [*landlord*] *and the* [*tenant*] *were back to square one, and the continuation of their lease . . . was restored.*" (Citations omitted; emphasis added; internal quotation marks omitted.) Id., 157; see also *Sproviero* v. *J.M. Scott Associates, Inc.*, 108 Conn. App. 454, 464–65, 948 A.2d 379 (concluding that revival of lease obligations at "square one" under *Hird* operates prospectively only and does not require "retroactive revival" of tenant's obligations under lease "because the landlord is compensated for assuming a tenant's obligations through use and occupancy payments"), cert. denied, 289 Conn. 906, 957 A.2d 873 (2008).

As noted previously, our trial courts are split on whether the withdrawal of a summary process action requires the landlord to serve another notice to quit prior to commencing a subsequent summary process action. See footnotes 9 and 10 of this opinion. Accordingly, in the present case, we must determine whether " 'square one' " under *Housing Authority* v. *Hird*, supra, 13 Conn. App. 157, means the state of affairs as they existed before the filing of the notice to quit, or instead, as they existed before the filing of the complaint in the summary process action. The parties' briefs

do not provide us with any authority beyond the cited Connecticut trial court cases,[14] and our own independent research has not yielded a great deal of assistance, with the exception of a comprehensive body of case law on this topic from our neighboring state, New York.

In New York, as in Connecticut, service of a notice to quit is a jurisdictional prerequisite to a summary process action. See, e.g., *Kaycee West 113th Street Corp.* v. *Diakoff*, 160 App. Div. 2d 573, 554 N.Y.S.2d 216 (1990). In the seminal case on this issue, the court concluded that, once a summary process action had been dismissed, the applicable statute; N. Y. Real Prop. Law § 232-a (McKinney 2006);[15] "requires the tenant to be informed of the landlord's intention by service of a new notice. Without a new notice, any subsequent summary proceeding must be dismissed." *Haberman* v. *Wager*, 73 Misc. 2d 732, 734, 342 N.Y.S.2d 405 (1973). In so concluding, the court noted that the notice to quit has two functions, namely, to "[end] the tenant's estate, and [to inform] him of the consequence of his failure to vacate. Because of the latter feature . . . the [l]egislature did not intend a . . . notice to be good forever." Id., 733. The court also noted that, following the dismissal of the first summary process action, "the tenant was entitled to a certain peace of mind. The landlord had done what in the notice he had threatened to do. He had lost. Perhaps now the landlord would lose interest in evicting the tenant. Perhaps the landlord would come to the tenant with an offer of compromise. Perhaps the landlord would be unable to cure the technical deficiencies which led to the dismissal of the first petition. All of these are things a tenant might reasonably hope."[16] Id., 734; see also *Nicolaides* v. *Division of Housing & Community Renewal*, 231 App. Div. 2d 723, 724, 647 N.Y.S.2d 866 (1996) ("[i]t is well settled that a notice of nonrenewal of a rent stabilized lease does not survive the dismissal of the first holdover action and cannot serve as the predicate for a second proceeding in a new forum"); *Kaycee West 113th Street Corp.* v. *Diakoff*, supra, 573 ("Since the Civil Court action was dismissed, the [thirty day] notice upon which it was predicated cannot be revived to support a new action. . . . Before the landlord commenced the new action . . . service of a new [thirty day] notice was required." [Citations omitted.]).

Moreover, the New York courts have recognized the practical value of this bright line rule, even in cases wherein the time lapse between the two summary process actions is minimal, noting that "in matters procedural . . . a rule of certainty is preferable to deciding on an ad hoc basis in each case whether the lapse between the two proceedings is reasonable or unreasonable." *Fromme* v. *Simsarian*, 121 Misc. 2d 792, 794, 468 N.Y.S.2d 990 (1983); see also *Colavolpe* v. *Williams*, 77 Misc. 2d 430, 431, 354 N.Y.S.2d 309 (1974) ("Without a new [thirty day] notice, a subsequent summary pro-

ceeding must fail. It was not intended that the [thirty day] notice could hang like the sword of Damocles over the head of the tenant, to be used at some future date, at the whim of the landlord. Indeed, the tenant is entitled to know that the prior action was in all respects terminated . . . .").

The plaintiffs claim that not requiring the service of a new notice to quit promotes judicial economy in summary process proceedings, particularly when the first notice to quit was valid. Indeed, they note that they promptly informed the defendants that the notice to quit was not being withdrawn, and that the action would be refiled, as the plaintiffs had no desire to revive the lease. Thus, the plaintiffs argue that they have performed the requisite "unequivocal act which clearly demonstrates [the landlord's] intent to terminate the lease";[17] *Sandrew* v. *Pequot Drug, Inc.*, 4 Conn. App. 627, 631, 495 A.2d 1127 (1985); and that it would frustrate judicial economy to require service of a new notice to quit prior to the commencement of a subsequent summary process action. Assuming that the underlying notice to quit was valid;[18] see footnote 8 of this opinion; we acknowledge that the plaintiffs' argument has some appeal on the discrete facts of this particular case, which involve a very short time line between actions and commercial parties represented by counsel. Guided, however, by the principles behind the New York case law, we agree with the defendants' contention that not requiring the service of a new notice to quit as a per se rule could well complicate the status of the parties' relationship after the withdrawal of the initial complaint, and would require more extensive determinations by the trial court concerning the parties' intentions and whether postwithdrawal payments are for rent, or use and occupancy. Moreover, notwithstanding the dissent's arguments to the contrary, the per se rule advocated by the defendants is not likely to be particularly costly or otherwise inefficient, as landlords can either amend the defects in their complaints, or simply serve a new notice to quit after withdrawal and prior to refiling, a process that could add only three days of delay prior to the institution of the subsequent summary process action. See General Statutes §§ 47a-23 (a) and 47a-23a (a). Accordingly, we conclude that, after withdrawing its initial summary process action, the plaintiffs, as landlord, were required to serve a new notice to quit prior to commencing a new summary process action.[19] Because they failed to do so, the trial court properly determined that it lacked subject matter jurisdiction and dismissed this summary process action.[20]

The judgment is affirmed.

In this opinion ROGERS, C. J., and ZARELLA, J., concurred.

[1] General Statutes § 47a-23 provides in relevant part: "(a) When the owner or lessor, or the owner's or lessor's legal representative, or the owner's or lessor's attorney-at-law, or in-fact, desires to obtain possession or occupancy

of any land or building, any apartment in any building, any dwelling unit, any trailer, or any land upon which a trailer is used or stands, and (1) when a rental agreement or lease of such property, whether in writing or by parol, terminates for any of the following reasons: (A) By lapse of time; (B) by reason of any expressed stipulation therein; (C) violation of the rental agreement or lease or of any rules or regulations adopted in accordance with section 47a-9 or 21-70; (D) nonpayment of rent within the grace period provided for residential property in section 47a-15a or 21-83; (E) nonpayment of rent when due for commercial property; (F) violation of section 47a-11 or subsection (b) of section 21-82; (G) nuisance, as defined in section 47a-32, or serious nuisance, as defined in section 47a-15 or 21-80 . . . . [S]uch owner or lessor, or such owner's or lessor's legal representative, or such owner's or lessor's attorney-at-law, or in-fact, shall give notice to each lessee or occupant to quit possession or occupancy of such land, building, apartment or dwelling unit, at least three days before the termination of the rental agreement or lease, if any, or before the time specified in the notice for the lessee or occupant to quit possession or occupancy.

"(b) The notice shall be in writing substantially in the following form: 'I (or we) hereby give you notice that you are to quit possession or occupancy of the (land, building, apartment or dwelling unit, or of any trailer or any land upon which a trailer is used or stands, as the case may be), now occupied by you at (here insert the address, including apartment number or other designation, as applicable), on or before the (here insert the date) for the following reason (here insert the reason or reasons for the notice to quit possession or occupancy using the statutory language or words of similar import, also the date and place of signing notice). A.B.'. If the owner or lessor, or the owner's or lessor's legal representative, attorney-at-law or attorney-in-fact knows of the presence of an occupant but does not know the name of such occupant, the notice for such occupant may be addressed to such occupant as 'John Doe', 'Jane Doe' or some other alias which reasonably characterizes the person to be served.

"(c) A copy of such notice shall be delivered to each lessee or occupant or left at such lessee's or occupant's place of residence or, if the rental agreement or lease concerns commercial property, at the place of the commercial establishment by a proper officer or indifferent person. Delivery of such notice may be made on any day of the week.

"(d) With respect to a month-to-month or a week-to-week tenancy of a dwelling unit, a notice to quit possession based on nonpayment of rent shall, upon delivery, terminate the rental agreement for the month or week in which the notice is delivered, convert the month-to-month or week-to-week tenancy to a tenancy at sufferance and provide proper basis for a summary process action notwithstanding that such notice was delivered in the month or week after the month or week in which the rent is alleged to be unpaid. . . ."

[2] The plaintiffs appealed from the judgment of the trial court to the Appellate Court. We subsequently granted the plaintiffs' motion to transfer the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-2.

[3] Hereafter, we refer to Renal Treatment Centers and Davita collectively as the defendants and individually by name when appropriate.

[4] Davita agreed to guarantee the payment of all of Renal Treatment Centers' lease obligations to the plaintiffs.

[5] The notice to quit provided in relevant part: "NOTICE is hereby given to you that you are to quit possession or occupancy of premises now occupied by you at 150 Mattatuck Heights Road, Waterbury, Connecticut (as specified on the attached exhibits) on or before January 23, 2008 for the following reasons: (1) by reason of any expressed stipulation therein; (2) nonpayment of rent when due for commercial property. . . ." The notice to quit further advised the defendants that "[a]ny payments tendered after this notice is served will not be accepted for rent. Such payments will be applied first to costs, attorney's fees (to the extent applicable) and then to use and occupancy, *with full reservation of rights to continue with the eviction action.*

"If a judicial proceeding for an eviction is instituted, you may present a defense in that proceeding." (Emphasis in original.)

[6] General Statutes § 47a-23a (a) provides: "If, at the expiration of the three days prescribed in section 47a-23, the lessee or occupant neglects or refuses to quit possession or occupancy of the premises, any commissioner of the Superior Court may issue a writ, summons and complaint which shall be in the form and nature of an ordinary writ, summons and complaint in a civil

process, but which shall set forth facts justifying a judgment for immediate possession or occupancy of the premises and make a claim for possession or occupancy of the premises. If the claim is for the possession or occupancy of nonresidential property, the writ, summons and complaint may also make a claim for the forfeiture to the plaintiff of the possessions and personal effects of the defendant in accordance with section 47a-42a. If the plaintiff has properly issued a notice to quit possession to an occupant by alias, if permitted to do so by section 47a-23, and has no further identifying information at the time of service of the writ, summons and complaint, such writ, summons and complaint may also name and serve such occupant or occupants as defendants. In any case in which service is to be made upon an occupant or occupants identified by alias, the complaint shall contain an allegation that the plaintiff does not know the name of such occupant or occupants. Such complaint shall be returnable to the Superior Court. Such complaint may be made returnable six days, inclusive, after service upon the defendant and shall be returned to court at least three days before the return day. Such complaint may be served on any day of the week. Notwithstanding the provisions of section 52-185 no recognizance shall be required of a complainant appearing pro se."

[7] The rent check was issued by Total Renal Care, Inc., another subsidiary of Davita.

[8] We note that the plaintiffs also raise, as a second issue in this appeal, the propriety of the trial court's determination, in dicta, of the validity of the notice to quit. Specifically, the plaintiffs claim that the trial court improperly concluded that, without additional language, the notice to quit failed to provide adequate notice to the defendants, despite the fact that it tracked the language of § 47a-23. See footnotes 1 and 5 of this opinion. We need not reach this claim in light of our conclusion herein that the trial court lacked subject matter jurisdiction over the summary process action because of the plaintiffs' failure to serve a new notice to quit. We note, however, that we have upheld as valid a nearly identical notice to quit in *Bristol* v. *Ocean State Job Lot Stores of Connecticut, Inc.*, 284 Conn. 1, 5–6, 931 A.2d 837 (2007); see also *Thomas E. Golden Realty Co.* v. *Society for Savings*, 31 Conn. App. 575, 580, 626 A.2d 788 (1993) (notice to quit is valid with "requisite specificity" if it " 'substantially tracks' " language of § 47a-23).

[9] See, e.g., *Stratford* v. *Sullivan*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. X08-CV-02-0189286-S (December 17, 2004); *SHP MGMT Tunxis Ave., L.P.* v. *Blakeney*, Superior Court, judicial district of Hartford, Housing Session, Docket No. HDSP-127921, H1261 (August 9, 2004); *Hill* v. *Purdy*, Superior Court, judicial district of Litchfield, geographical area number eighteen at Bantam, Housing Session, Docket No. CV-188661 (December 4, 2002).

[10] See *Amresco Residential Corp.* v. *Jones*, Superior Court, judicial district of Hartford-New Britain at Hartford, Housing Session, Docket No. SPH-96230, H-1145 (March 26, 1998).

[11] "A tenancy at sufferance arises when a person who came into possession of land rightfully continues in possession wrongfully after his right thereto has terminated." (Internal quotation marks omitted.) *O'Brien Properties, Inc.* v. *Rodriguez*, 215 Conn. 367, 372, 576 A.2d 469 (1990).

[12] The Appellate Court noted that "[s]ervice of a notice to quit possession is typically a landlord's unequivocal act notifying the tenant of the termination of the lease. The lease is neither voided nor rescinded until the landlord performs this act and, upon service of a notice to quit possession, a tenancy at will is converted to a tenancy at sufferance." *Housing Authority* v. *Hird*, supra, 13 Conn. App. 155; see also footnotes 17 and 18 of this opinion.

[13] General Statutes § 52-80 provides: "If the plaintiff, in any action returned to court and entered in the docket, does not, on or before the opening of the court on the second day thereof, appear by himself or attorney to prosecute such action, he shall be nonsuited, in which case the defendant, if he appears, shall recover costs from the plaintiff. The plaintiff may withdraw any action so returned to and entered in the docket of any court, before the commencement of a hearing on the merits thereof. After the commencement of a hearing on an issue of fact in any such action, the plaintiff may withdraw such action, or any other party thereto may withdraw any cross complaint or counterclaim filed therein by him, only by leave of court for cause shown."

[14] We acknowledge that then Judge Borden, in his dissenting opinion in *Bridgeport* v. *Barbour-Daniel Electronics, Inc.*, supra, 16 Conn. App. 587, appears to view " 'square one' " under *Housing Authority* v. *Hird*, supra, 13 Conn. App. 157, as the status quo preceding the filing of the summary

process complaint, rather than the service of the notice to quit. Dissenting from the majority's conclusion that an invalid notice to quit was, in addition to not being a proper basis for a summary process action, also a failure to terminate the landlord-tenant relationship; *Bridgeport* v. *Barbour-Daniel Electronics, Inc.*, supra, 584; Justice Borden discussed *Hird* and noted that "the lease or tenancy under which the parties operated prior to service of the notice to quit will be revived by a judgment for the tenant in any subsequent summary process action alleging termination of the tenancy by service of that notice to quit . . . [or] *by withdrawal of any subsequent summary process action alleging termination of the tenancy by service of that notice to quit . . . by the landlord's communication to the tenant of the withdrawal of the previously served notice to quit*; or by any other act by which the landlord clearly acquiesces in the tenant's continued possession of the property." (Citations omitted; emphasis added.) Id., 595 n.5 (*Borden, J.*, dissenting). Although Judge Borden appeared to contemplate the withdrawal of the complaint and the withdrawal of the notice to quit as two different acts, we do not view his comments in *Barbour-Daniel Electronics, Inc.*, as dispositive of the present appeal because this precise issue was not before the court in that case, and the basic premise of his dissent, namely, that an invalid notice to quit nevertheless may operate to terminate a lease, is inconsistent with this court's subsequent decision in *Bargain Mart, Inc.* v. *Lipkis*, supra, 212 Conn. 134. See also footnote 19 of this opinion.

[15] Section 232-a of New York Real Property Law (McKinney 2006) provides: "No monthly tenant, or tenant from month to month, shall hereafter be removed from any lands or buildings in the city of New York on the grounds of holding over his term unless at least thirty days before the expiration of the term the landlord or his agent serve upon the tenant, in the same manner in which a notice of petition in summary proceedings is now allowed to be served by law, a notice in writing to the effect that the landlord elects to terminate the tenancy and that unless the tenant removes from such premises on the day on which his term expires the landlord will commence summary proceedings under the statute to remove such tenant therefrom."

[16] The dissent attempts to distinguish this case law by arguing that these cases involved dismissals of previously filed summary process actions, rather than voluntary withdrawals of those actions. See *Nicolaides* v. *Division of Housing & Community Renewal*, 231 App. Div. 2d 723, 724, 647 N.Y.S.2d 866 (1996); *Kaycee West 113th Street Corp.* v. *Diakoff*, supra, 160 App. Div. 2d 573; *Haberman* v. *Wager*, supra, 73 Misc. 2d 734. We disagree, because under the case law applying § 52-80, the statute that governs withdrawals of civil actions, the dissent points to a distinction without a difference. See *Sicaras* v. *Hartford*, 44 Conn. App. 771, 775, 692 A.2d 1290 ("[w]ithdrawals are analogous to final judgments"), cert. denied, 241 Conn. 916, 696 A.2d 340 (1997); see also *Lusas* v. *St. Patrick's Roman Catholic Church Corp.*, 123 Conn. 166, 170, 193 A. 204 (1937) ("[t]he situation as regards the jurisdiction of the court to proceed further in the matter after an action has been voluntarily withdrawn is strictly analogous to that presented after the rendition of a final judgment or the erasure of a case from the docket"); *Housing Authority* v. *Hird*, supra, 13 Conn. App. 157 (same).

Thus, we also disagree with the dissent's attempt to distinguish *Housing Authority* v. *Hird*, supra, 13 Conn. App. 150, on the ground that the withdrawal of the second summary process action therein "may not have been a fully voluntary withdrawal, but, instead, the recognition of a procedural defect in the second notice to quit" that would have permitted the tenant to file a successful motion to dismiss. Given the effect of a withdrawal under § 52-80, in our view, the reasons motivating the landlord's withdrawal in *Hird* simply do not matter.

[17] "It is well settled that breach of a covenant to pay rent does not automatically result in the termination of a lease . . . rather, it gives the lessor a right to terminate the lease which he may or may not exercise. . . . In order to effect a termination, the lessor must perform some unequivocal act which clearly demonstrates his intent to terminate the lease." (Citations omitted.) *Sandrew* v. *Pequot Drug, Inc.*, 4 Conn. App. 627, 630–31, 495 A.2d 1127 (1985). Although the Appellate Court has stated that "there is almost no limit to the possible words or deeds which might constitute the unequivocal act necessary to terminate the lease," that court also has noted that such latitude is applicable only in situations wherein "a lessor might wish to terminate a lease but not wish to institute a summary process action," such as where the tenant has already moved away from the premises. Id., 631. Thus, a statement terminating a lease may serve as the condition

precedent to a summary process action only if it "substantially compl[ies] with the format or substance of a statutory notice to quit" set forth by § 47a-23. Id., 632.

[18] "[A]fter a notice to quit possession has been served, a tenant's fixed tenancy is converted into a tenancy at sufferance. . . . A tenant at sufferance is released from his obligations under a lease. . . . His only obligations are to pay the reasonable rental value of the property which he occupied in the form of use and occupancy payments . . . and to fulfill all statutory obligations." (Citations omitted.) *Sproviero* v. *J.M. Scott Associates, Inc.*, supra, 108 Conn. App. 462–63; id., 463 (noting that tenants were relieved from lease obligation to maintain septic system during pendency of litigation after service of notice to quit). A legally invalid notice to quit is, however, considered "equivocal" because of that legal defect and, therefore, does not operate to terminate a lease. See *Bargain Mart, Inc.* v. *Lipkis*, supra, 212 Conn. 134 ("[i]t is self-evident that if the notice [to quit] is invalid, then the legal consequence of 'termination' arising from the service of a valid notice [to quit] does not result"); see also id., 135 ("[b]ecause the trial court in the summary process action did not determine whether the notices to quit were valid, we have no basis for concluding that those notices terminated the . . . lease"); *Bridgeport* v. *Barbour-Daniel Electronics, Inc.*, supra, 16 Conn. App. 582–83 (statutory notice to quit invalid because of untimely service did not terminate month-to-month tenancy and cannot serve as basis for summary process action, thus requiring service of second notice to quit).

[19] We disagree with the dissent's characterization of our conclusion as an "[implicit] overrul[ing] [of] . . . our substantial body of case law that establishes that a valid notice to quit terminates the lease," and renders the tenancy one at sufferance, particularly given that a "valid notice to quit already had been served on the defendants [that] terminated the lease between the parties . . . ." We part company from the dissent in large part on the basis of its apparent analytical predicate that the first notice to quit in this case was *presumptively* valid. See also footnote 8 of this opinion. The dissent does not point to any case law or statute establishing the presumptive validity of such notices, and this court's decision in *Bargain Mart, Inc.* v. *Lipkis*, supra, 212 Conn. 134, appears to stand for the contrary proposition, as we stated therein that "[t]he defendants' argument *erroneously equates an unequivocal notice of intent to terminate a lease with a termination of the lease.* As the Appellate Court correctly observed in *Bridgeport* v. *Barbour-Daniel Electronics, Inc.*, [supra, 16 Conn. App. 582–84] . . . a notice to quit will not terminate a lease if the notice itself is invalid. Indeed, it is self-evident that if the notice is invalid, then the legal consequence of 'termination' arising from the service of a valid notice does not result." (Emphasis added.) Moreover, in *Bargain Mart, Inc.* v. *Lipkis*, supra, 136, we rejected the argument "that, under [*Housing Authority* v. *Hird*, supra, 13 Conn. App. 155], there would be no reason for a judgment in favor of the tenant in a summary process action to 'revive' the lease if the lease had not been terminated by the notice to quit," observing that the validity of the notices to quit in *Bargain Mart, Inc.*, were in dispute, and the "logical predicate to the *Hird* court's 'revival' analysis—the existence of a valid notice to quit or, where the validity of the notice is in dispute, a finding of validity—was absent in [this] . . . summary process action." Because there was no judicial determination of the validity of the notice to quit utilized by the plaintiffs in the first summary process action in the present case, our conclusion does not disturb the well established body of case law holding that a valid notice to quit terminates the lease.

[20] We need not, therefore, reach the plaintiffs' claims with respect to the trial court's determination regarding the propriety of the notice to quit in this case. But see footnote 8 of this opinion.