

NO. SNSP-036995	:	SUPERIOR COURT
ALLAN M. SZABO	:	J. D. OF STAMFORD- NORWALK
VS.	:	HOUSING SESSION AT NORWALK
BARBARA GAVIN	:	December 9, 2009

MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO DISMISS

A motion to dismiss challenges the court's subject matter jurisdiction. See Practice Book § 10-30; *Filippi v. Sullivan*, 273 Conn. 1, 8, 866 A.2d 599 (2005). "Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction. . . ." (Internal quotation marks omitted.) *Bloomfield v. United Electric, Radio & Machine Workers of America, Connecticut Independent Police Union, Local 14*, 285 Conn. 278, 286, 939 A.2d 561 (2008). "When a . . . court decides a . . . question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Internal quotation marks omitted.) *Bellman v. West Hartford*, 96 Conn. App. 387, 393, 900 A.2d 82 (2006). Further, in addition to admitting all facts well pleaded, the motion to dismiss "invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts." (Internal quotation marks omitted.) *May v. Coffey*, 291 Conn. 106, 108, 967 A.2d 495 (2009); *Cogswell v. American Transit Ins. Co.*, 282 Conn. 505, 516, 923 A.2d 638 (2007); *Henriquez v.*

*Allegre*, 68 Conn. App. 238, 242, 789 A.2d 1142 (2002). "A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *Neiman v. Yale University*, 270 Conn. 244, 250-51, 851 A.2d 1165 (2004). "Where, however . . . the motion [to dismiss] is accompanied by supporting affidavits containing undisputed facts, the court may look to their content for determination of the jurisdictional issue and need not conclusively presume the validity of the allegations of the complaint." (Internal quotation marks omitted.) *Ferreira v. Pringle*, 255 Conn. 330, 346-47, 766 A.2d 400 (2001).

The defendants have filed no affidavits in support of their motion. There is no evidence before the Court with regard to any alleged failure to provide a notice. The motion must be denied on that basis.

Our Supreme Court has stated that "Before the [trial] court can entertain a summary process action and evict a tenant, the owner of the land must previously have served the tenant with notice to quit. . . . As a condition precedent to a summary process action, proper notice to quit [pursuant to § 47a-23] is a jurisdictional necessity." (Citations omitted.) *Lampasona v. Jacobs*, 209 Conn. 724, 728-29, 553 A.2d 175, cert. denied, 492 U.S. 919, 109 S. Ct. 3244, 106 L. Ed. 2d 590 (1989); see also *Bristol v. Ocean State Job Lot Stores of Connecticut, Inc.*, 284 Conn. 1, 5, 931 A.2d 837 (2007); see generally *Kapa Associates v. Flores*, 35 Conn. Sup. 274, 408 A.2d 22 (1979). Simply put, "before a landlord may pursue its statutory remedy of summary process, the landlord must prove compliance with all of the applicable preconditions set by state and federal

law for the termination of the lease." *Housing Authority v. Harris*, 28 Conn. App. 684, 689, 611 A.2d 934 (1992), *aff'd*, 225 Conn. 600, 625 A.2d 816 (1993). "The failure to comply with the statutory requirements deprives a court of jurisdiction to hear the summary process action." *Bridgeport v. Barbour-Daniel Electronics, Inc.*, 16 Conn. App. 574, 582, 548 A.2d 744, *cert. denied*, 209 Conn. 826, 552 A.2d 432 (1988).

In this case, the defendants are claiming that the plaintiff landlords failed to satisfy an alleged pre-termination requirement contained **within the lease**, not one required by state or federal law. Therefore, any claimed failure cannot be a jurisdictional defect, and a target for a motion to dismiss.

The defendants' motion carries on a vexing but common practice in the housing session for parties to "front-load all issues under the guise of jurisdiction." (Internal quotation marks omitted.) *Walsh v. Quiles*, Superior Court, judicial district of New Haven, Docket No. SPNH 98 0354191, 1998 WL 395179 (May 13, 1998) (22 Conn. L. Rptr. 396, 398) (Levin, J.). The motion must be denied.

#### THE PLAINTIFFS

By \_\_\_\_\_  
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**CERTIFICATION**

This is to certify that a copy of the foregoing was hand delivered on the 10<sup>th</sup> day of December 2009 to:

E. James Loughlin, Esq.  
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