VERTEFEUILLE, J., with whom PALMER, J., joins, dissenting. I respectfully disagree with the majority's conclusion that the withdrawal by the plaintiffs, Waterbury Twin, LLC, and 150 MH, LLC, of their summary process action against the defendants, Renal Treatment Centers–Northeast, Inc., and Davita, Inc., revived the written lease between the parties and required the plaintiffs to serve a new notice to quit pursuant to General Statutes § 47a-23 prior to filing a new summary process action against the defendants. After a careful review of our prior cases, I conclude that the majority ignores, or perhaps implicitly overrules, our substantial body of case law that establishes that a valid notice to quit terminates the lease. An additional notice to quit therefore is unnecessary. In addition, I find that the majority's reliance on New York case law for its conclusion is misplaced.

"The Superior Court has jurisdiction to hear a summary process action only if the landlord has previously served the tenant with a notice to quit." (Internal quotation marks omitted.) *Housing Authority* v. *Harris*, 225 Conn. 600, 605, 625 A.2d 816 (1993); *Lampasona* v. *Jacobs*, 209 Conn. 724, 729, 553 A.2d 175, cert. denied, 492 U.S. 919, 109 S. Ct. 3244, 106 L. Ed. 2d 590 (1989) ("[a]s a condition precedent to a summary process action, proper notice to quit is a jurisdictional necessity"). It is well established that "[t]he issuance by a landlord of a notice to quit is an unequivocal act terminating the lease agreement with the tenant. Termination of the lease does not terminate the tenancy since, upon service of a notice to quit, a tenancy at sufferance is created. . . . After a notice to quit has been served . . . a tenant at sufferance no longer has a duty to pay rent. He still, however, is obliged to pay a fair rental value in the form of use and occupancy for the dwelling unit." (Citations omitted; internal quotation marks omitted.) *O'Brien Properties, Inc.* v. *Rodriguez*, 215 Conn. 367, 372, 576 A.2d 469 (1990).

The courts of this state have long concluded that a valid notice to quit terminates a lease. Indeed, a review of case law from these courts reveals that this principle has been recognized in this state as far back as the early part of twentieth century and has been applied consistently ever since. See *Thompson* v. *Coe*, 96 Conn. 644, 651, 115 A. 219 (1921) ("[w]e think the service of the notice to quit was a definite, unequivocal act of the lessor showing the exercise of her option to terminate, and that it took effect on . . . the date the notice was served"); *Tseka* v. *Scher*, 135 Conn. 400, 404, 65 A.2d 169 (1949) ("the lessor can terminate the lease under these circumstances only by a re-entry or other unequiv-

ocal act, such as a notice to quit"); *Borst* v *Ruff*, 137 Conn. 359, 361, 77 A.2d 343 (1950) ("[b]y serving the notice to quit . . . the landlord performed an act which was sufficiently unequivocal to terminate the tenancy"); *Kligerman* v. *Robinson*, 140 Conn. 219, 222, 99 A.2d 186 (1953) ("While the tenant's nonpayment of rent did not automatically terminate the lease, his failure to make a tender for [two] months . . . entitled the landlord to end the tenancy by some unequivocal act. . . . That act, in the instant case, was the service of the notice to quit." [Citation omitted.]); *Mayron's Bake Shops*, *Inc.* v. *Arrow Stores*, *Inc.*, 149 Conn. 149, 156, 176 A.2d 574 (1961) ("[t]he service of the notice to quit . . . [is] the landlord's first unequivocal act notifying the tenant of the termination of the lease"); *Danpar Associates* v. *Falkha*, 37 Conn. Sup. 820, 824, 438 A.2d 1209 (1981) ("Some unequivocal act by the plaintiff showing that it had exercised its option to terminate was necessary. . . . Service of the notice to quit . . . would constitute such an act." [Citation omitted.]); *Bushnell Plaza Development Corp.* v. *Fazzano*, 38 Conn. Sup. 683, 686, 460 A.2d 1311 (1983) ("[t]he notice to quit constituted an unequivocal offer to terminate the monthly rental . . . [and] [u]pon its service, the tenancy at will was converted to a tenancy at sufferance"); *Rivera* v. *Santiago*, 4 Conn. App. 608, 610, 495 A.2d 1122 (1985) ("[t]he issuance by a landlord of a notice to quit is an unequivocal act terminating the lease agreement with the tenant"); *Tehrani* v. *Century Medical Center*, 7 Conn. App. 301, 305, 508 A.2d 814 (1986) ("[t]he service of the notice to quit possession . . . was the [landlords'] first unequivocal act notifying the [tenant] of the termination of the lease for nonpayment of . . . rent"); *Housing Authority* v. *Hird*, 13 Conn. App. 150, 155, 535 A.2d 377 ("Service 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. . . . It is necessary to prove the allegations of the notice to quit possession in order to obtain a judgment for possession." [Citations omitted.]), cert. denied, 209 Conn. 825, 552 A.2d 433 (1988); *O'Brien Properties*, *Inc.* v. *Rodriguez*, supra, 215 Conn. 372 ("[t]he issuance by a landlord of a notice to quit is an unequivocal act terminating the lease agreement with the tenant" [internal quotation marks omitted]); *Sproviero* v. *J.M. Scott Associates*, *Inc.*, 108 Conn. App. 454, 458 n.2, 948 A.2d 379 ("[s]ervice of a notice to quit possession is typically a landlord's unequivocal act notifying the tenant of the termination of the lease"), cert. denied, 289 Conn. 906, 957 A.2d 873 (2008); see also P. Marzinotto, Connecticut Summary Process Manual (1986) p. 31 ("[t]he notice to quit is the basis for the inauguration of a summary process action and constitutes an unequivocal act terminating the lease").

Our courts also have concluded, consistently with this authority, that an invalid notice to quit does not terminate the lease. "[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." *Bargain Mart, Inc.* v. *Lipkis*, 212 Conn. 120, 134, 561 A.2d 1365 (1989); see also *Bridgeport* v. *Barbour-Daniel Electronics, Inc.*, 16 Conn. App. 574, 582–84, 548 A.2d 744 (concluding notice to quit invalid and "[w]hen the notice to quit has no effect, it cannot terminate a lease"), cert. denied, 209 Conn. 826, 552 A.2d 432 (1988).

In the present case, the majority requires that the plaintiffs serve a new notice to quit prior to bringing a new summary process action despite the presumed validity of the first notice to quit.[1] I disagree. The majority's conclusion is, at the very least, inconsistent with our long-standing, well established body of case law holding that a valid notice to quit terminates the lease.[2] Moreover, given that a valid notice to quit already had been served on the defendants and it terminated the lease between the parties, service of an additional notice to quit is unnecessary, duplicative and contrary to the very purpose of summary process, which is to provide an expeditious remedy for a landlord seeking to obtain possession of leased premises. *Bristol* v. *Ocean State Job Lot Stores of Connecticut, Inc.*, 284 Conn. 1, 5–6, 931 A.2d 837 (2007).

The majority also relies for its conclusion on case law from New York state. I disagree, however, with the majority's determination that New York case law supports a conclusion that the plaintiffs in the present case were required to serve a second notice to quit prior to instituting a second summary process action. The cases relied on by the majority can be readily distinguished from the facts of the present case. In *Nicolaides* v. *State 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*, 160 App. Div. 2d 573, 554 N.Y.S.2d 216 (1990), and *Haberman* v. *Wager*, 73 Misc. 2d 732, 734, 342 N.Y.S.2d 405 (1973), the New York courts held, in brief opinions with little reasoning, that, after an initial summary process action instituted by a landlord had been *dismissed* by the trial court, the landlord was required to serve another notice to quit prior to instituting a second summary process action. These cases are clearly inapposite to the present case, where the plaintiffs *voluntarily withdrew* the initial summary process action, and the trial court took no action.[3]

Finally, I address *Housing Authority* v. *Hird*, supra, 13 Conn. App. 150, on which the defendants in the present action rely. In *Hird*, a residential landlord served an initial notice to quit on its tenant on July 15,

1985, alleging that the tenant "had violated the lease by maintaining the premises in an unsanitary condition and by keeping pets on the premises." Id., 153. The notice contained the following language: "All payments made by you, on or after the date of this notice, shall be accepted as [u]se and [o]ccupancy [o]nly without prejudice to the [landlord's] right to evict you." (Internal quotation marks omitted.) Id. The landlord then initiated a summary process action against the tenant, which ultimately resulted in a *judgment* for the tenant on November 6, 1985. Id. Thereafter, the landlord served a second notice to quit on the tenant on November 15, 1985, alleging that the tenant had failed to pay that month's rent. The landlord then initiated a second summary process action against the tenant, which the tenant sought to dismiss, claiming that the landlord had failed to comply with the federal regulations applicable to the apartment where the tenant resided. Id. In response to the tenant's motion to dismiss, the landlord voluntarily withdrew the second summary process action on January 29, 1986. Id. On January 31, 1986, the tenant was served with a third notice to quit possession, alleging nonpayment of rent for the month of January, 1986. Id., 154. In defense, the tenant asserted that no lease was in effect in January, 1986, because the second notice to quit had terminated the parties' lease in November, 1985, and therefore, she could not be evicted for nonpayment of rent for that month since only use and occupancy payments were due. Id. The trial court rejected the tenant's claim, determining that the tenant "was then occupying her apartment . . . as a tenant at will" in January, 1986. (Internal quotation marks omitted.) Id. The tenant appealed, claiming that the trial court improperly concluded that a rental agreement existed between the parties in January, 1986, because the first summary process action that resulted in judgment for the tenant and the second notice to quit operated to terminate the tenant's lease. Id., 154–55.

The Appellate Court affirmed the judgment of the trial court. In doing so, the Appellate Court concluded that "[t]he service of the notice to quit possession on July 15, 1985, did not compromise the [rights of the tenant] because the subsequent trial and judgment on the merits in the summary process action predicated on this notice did not uphold the allegations of the complaint asserting the termination of the lease by this notice to quit possession. The trial court, therefore, correctly concluded that the [tenant's] lease survived the judgment of November 6, 1985, in her favor. The parties were returned to their status quo before July 15, 1985, by this judgment." Id., 156.

The Appellate Court further concluded, however, that "the [tenant's] lease also survived [the second] summary process action because of its withdrawal by the [landlord] before a hearing and judgment thereon. . . . The withdrawal of the summary process action on Janu-

ary 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 of January 9, 1981, was restored.*" (Citations omitted; emphasis added.) Id., 156–57.

I would conclude that *Hird* does not support the majority's conclusion in the present case. The landlord in *Hird* withdrew the second summary process action in response to the defendant's motion to dismiss, which claimed that the second notice to quit was defective for failing to comply with applicable federal regulations. Id., 156. Thus, it appears that the second notice to quit was of questionable validity and the landlord's withdrawal of the second summary process action in *Hird* may not have been a fully voluntary withdrawal, but, instead, the recognition of a procedural defect in the second notice to quit. To the extent that *Hird* seems to indicate that a notice to quit is vitiated by the landlord's voluntary withdrawal of a summary process action, therefore, I would limit the application of *Hird* to the facts of that case. This interpretation of *Hird* is consistent with our cases, previously cited herein, that have held that an invalid notice to quit does not terminate the lease.

I therefore respectfully dissent.

[1] The majority states in footnote 8 of its opinion that it need not address whether the first notice to quit served by the plaintiffs is valid as a result of its conclusion that the trial court lacked subject matter jurisdiction over the summary process action because of the plaintiffs' failure to serve a second notice to quit. Like the majority, I assume, for purposes of addressing the plaintiffs' first claim, that the first notice to quit served by the plaintiffs is valid.

[2] Although the majority concludes that it is not necessary to reach the plaintiffs' claim regarding the validity of the notice to quit and notes that this court has "upheld as valid a nearly identical notice to quit"; see footnote 8 of the majority opinion; the majority nevertheless asserts that we can not presume the notice to quit is valid and, therefore, its conclusion does not implicitly overrule our substantial body of case law that establishes that a valid notice to quit terminates the lease because there has been no judicial determination that the notice to quit served by the landlord is valid. I disagree.

The majority relies on *Bargain Mart, Inc.* v. *Lipkis*, 212 Conn. 120, 134, 561 A.2d 1365 (1989), in support of its position that we can not presume that the notice to quit in the present case was valid in the absence of a judicial determination of its validity. I find *Bargain Mart, Inc.*, to be inapposite. In that case, the landlord had served notices to quit on the tenant and then had instituted a summary process action. Id., 122. The tenant had challenged the summary process action, asserting several special defenses including that the notices to quit served on him were invalid. Id., 122–23. The parties eventually settled that summary process action by a stipulated judgment, which did not specifically address the validity of the notice to quit. Id., 123. In a subsequent related action, the landlord attempted to assert that the notices to quit served on the tenant in relation to the prior action terminated the lease. Id., 125. Recognizing that the summary process action had been settled by a stipulated judgment and that "[s]uch a judgment represents 'a settlement of the controversy by the parties thereto [thus creating the presumption] that the parties intended to settle all aspects of the controversy, including all issues raised by the papers comprising the record,' " this court concluded that it had "no basis for concluding that [the initial notices to quit] terminated the [tenant's] lease." Id., 135. This court's conclusion in *Bargain Mart, Inc.*, was clearly based on its conclusion as to which issues

were resolved in the stipulated judgment and was designed to give effect to that stipulated judgment. Nothing in *Bargain Mart, Inc.*, prohibits this court from assuming that the notice to quit served in the present case was valid for purposes of deciding whether the plaintiffs were required to serve another notice to quit on the defendants prior to bringing a second summary process action.

Moreover, the logical consequence of the majority's conclusion is that no notice to quit can have any legal effect until a court has made a judicial determination that such notice is valid. In other words, if a landlord serves a notice to quit on its tenant, the tenant will not have to consider its lease terminated until the tenant challenges the validity of the notice to quit and receives a judicial determination that the notice to quit was valid. Indeed, the position taken by the majority flies in the face of the public policy that the majority seeks to promote, namely, establishing bright line rules in this area so that landlords and tenants will understand their respective positions more clearly.

[3] The majority asserts that there is no reason to distinguish between a case in which a landlord has withdrawn a summary process action and one in which the summary process action has been dismissed on the merits. To support this conclusion, in footnote 16 of its opinion, the majority cites cases in which the Appellate Court and this court have concluded that withdrawals and final judgments are analogous for purposes of whether a court retains jurisdiction over a particular matter. 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"). I disagree. *Sicaras* and *Lusas* were civil cases, not summary process cases. Although there may be no distinction between a voluntary withdrawal and dismissal on the merits for purposes of whether the court retains jurisdiction over a civil case, these cases provide no guidance as to whether a notice to quit served by a party continues to have legal effect after the voluntary withdrawal of a subsequent summary process action.