"RE: PAST DUE RENT

Inv. No	Inv. Date	Due Date	Inv. Amount	Balance
	08/27/2013	08/27/2013	$1,797.56	$1,797.56
10	09/01/2013	09/11/2013	$93.00	$93.00
CHFA201321	10/01/2013	10/11/2013	$93.00	$93.00
2014-1232	11/01/2014	11/11/2014	$1,402.00	$1,402.00
2014-1340	12/01/2014	12/11/2014	$1,402.00	$1,402.00
2014-1455	01/01/2015	01/11/2015	$1,402.00	$1,402.00

Total Rental Obligation: **$6,189.56**"

"You have violated the terms of your lease in that you failed to pay your *rent*, *in the total rental obligation of $6,189.56*. Your failure to pay such *rent* constitutes a material noncompliance with the terms of your lease.

"We hereby notify you that your lease agreement may be subject to termination and an immediate eviction proceeding, initiated by our office. We value our tenants and request that you immediately contact our office, regarding full payment of your rental obligations. *Your rental obligations will include the delinquent rent*, *late fees*, *utilities*, *legal fees*, *and any other eviction proceeding sundry cost.*

"You have the right within ten days after receipt of this notice or within ten days after the date following the date this notice was mailed whichever is earlier to discuss the proposed termination of your tenancy with your landlord's agent[7] . . . .

"If you remain in the premises on the date specified for termination, we may seek to enforce the termination by bringing judicial action at which time you have a right to present a defense." (Emphasis added.)

The defendant filed a motion to dismiss the plaintiff's summary process complaint on the ground that the pretermination notice was defective and, therefore, that the court lacked subject matter jurisdiction. The alleged defects were (1) a variance in the cure amount requested in the pretermination notice ($6189.56) and the alleged nonpayment that is the basis of the com-

[7] In a footnote in its memorandum of decision, the trial court acknowledged that the parties disputed whether the defendant had discussed, or attempted to discuss, this matter with the plaintiff during the ten day period.

plaint ($1402), which contravenes federal laws regulating the pretermination notice, as articulated in the HUD Handbook and state case law, and (2) the notice's allegations of violations of leases that are no longer in effect, which violate Connecticut summary process law.

In its opposition to the motion, the plaintiff argued that the pretermination notice was not defective. It asserted that there was nothing defective about a pretermination notice that lists the total financial obligations owed by the defendant to the plaintiff. The plaintiff further contended that a federal pretermination notice fully complies with the law if it includes the specific information supporting the landlord's right to termination; a notice does not become defective simply because it contains more information than strictly necessary.

The trial court granted the defendant's motion to dismiss. The court determined that the notice was defective because it contained legally impermissible and factually inaccurate grounds for termination. The trial court explained that one purpose of the pretermination notice is to provide the tenant with the opportunity to cure. The present notice did not provide this opportunity because it was misleading in at least two ways. First, the notice informed the defendant that she had to pay $6189.56 in order to prevent eviction when, under state summary process law, payment of a far lesser amount, $2804 (rent for December, 2014, and January, 2015), would have prevented the only eviction that could have been initiated based on that particular notice.[8] See General Statutes § 47a-23 (d). Second, the

The court explained that it had declined to hold an evidentiary hearing to resolve this dispute because its resolution of the case on other grounds rendered it unnecessary. The Appellate Court did not address this footnote when it stated that the defendant "did not discuss the possible termination of her tenancy with the plaintiff's agent during the ten day period . . . ." *Presidential Village, LLC* v. *Perkins*, supra, 176 Conn. App. 496.

[8] As of March 1, 2011, the defendant's one year lease converted to a month-to-month lease. In a month-to-month tenancy, "[t]he tenancy for each month is separate and distinct from that of every other month. *Welk* v. *Bidwell*, 136 Conn. 603, 607, 73 A.2d 295 [(1950)]. There is a new contract of leasing for each successive month; *DiCostanzo* v. *Tripodi*, 137 Conn. 513, 515, 78

notice included charges as "rental obligations" that did not qualify as "rent." The trial court noted that the plaintiff had conceded that the $6189.56 in "rental obligations" included approximately $1300 in attorney's fees for which the defendant was not even liable,[9] and that it could not account for another portion of one of the charges listed. The trial court concluded that the defective notice deprived it of subject matter jurisdiction and rendered a judgment of dismissal.

The plaintiff appealed to the Appellate Court. The Appellate Court reversed the judgment, holding that the pretermination notice was not jurisdictionally defective. *Presidential Village* v. *Perkins*, supra, 176 Conn. App. 494. The Appellate Court determined that the trial court improperly incorporated state summary process law in determining that the notice was defective. Id., 499–500. The Appellate Court held that the notice must be assessed solely in relation to the requirements of federal law; id., 500; under which a pretermination notice for nonpayment of rent required only "the dollar amount of the balance due on the rent account and the date of such computation . . . ." (Internal quotation marks omitted.) Id., 502, quoting 24 C.F.R. § 247.4 [e] (2017). The Appellate Court determined that the

A.2d 890 [(1951)]; and the right of tenancy ends with that month for which the rent has been paid." *Kligerman* v. *Robinson*, 140 Conn. 219, 221, 99 A.2d 186 (1953). Each month is a separate contract. Id. Our summary process law modifies the common law by permitting a landlord to terminate a month-to-month tenancy based on nonpayment of rent not only for the month in which the notice to quit is served but also for the immediately preceding month. See General Statutes § 47a-23 (d). In the present case, because the plaintiff served the notice to quit in January, 2015, it had the right to claim nonpayment of rent for December, 2014, but not for prior months.

[9] According to the trial court's decision, the plaintiff conceded during oral argument before that court that the attorney's fees were from a prior, unsuccessful action that should not have been charged to the defendant. At oral argument before this court, the plaintiff's counsel suggested that perhaps the defendant was liable for the attorney's fees. As this statement is in direct conflict with the trial court's decision, the proper time and means to have raised this matter would have been through the filing of a motion for rectification in the trial court. See Practice Book § 66-5. In the absence of any such rectification, we presume that the plaintiff did make, and is bound by, such a concession.

plaintiff complied with this requirement because all of the charges listed in the pretermination notice were amounts for either past due rent or other financial obligations due under the lease. Id., 502–503.

The Appellate Court rejected the defendant's argument that the balance due on the "rent account" was limited to the amount of unpaid rent that supported the nonpayment of rent ground alleged in the complaint. Id., 503–504. It agreed with the plaintiff that, irrespective of whether the notice may have misled the defendant as to the amount needed to cure the violation of the lease agreement, the federal notice requirement is intended only to allow the tenant to prepare a defense against the summary process action, not to afford an opportunity to cure noncompliance and thereby avoid such an action.[10] Id. Finally, the Appellate Court noted that, even if it were to agree with the trial court that

[10] By drawing a clear distinction between curing a default and preparing a defense, the Appellate Court appears to have implicitly rejected the possibility that the opportunity to cure may be relevant to preparing a defense to present in an eviction action. For example, equitable nonforfeiture is a defense that may apply to a summary process action premised on nonpayment of rent. See *19 Perry Street, LLC* v. *Unionville Water Co.*, 294 Conn. 611, 630, 987 A.2d 1009 (2010). "[T]he doctrine against forfeitures applies to a failure to pay rent in full when that failure is accompanied by a good faith intent to comply with the lease or a good faith dispute over the meaning of a lease." (Internal quotation marks omitted.) Id. "[T]he conduct of the [lessee] after he was informed of the nonpayment . . . is conclusive of the good faith of the [lessee] . . . and his continuous desire to avoid a forfeiture . . . ." *Thompson* v. *Coe*, 96 Conn. 644, 657, 115 A. 219 (1921). "[M]any courts have also taken into consideration the tenant's actions after receiving notice by the landlord of the termination of the lease, *looking favorably on any actions by the tenant to cure the default or evidencing an intent to prevent the forfeiture* . . . ." (Emphasis added; internal quotation marks omitted.) *19 Perry Street, LLC* v. *Unionville Water Co.*, supra, 634. Thus, if the lack of specificity in a notice discourages the tenant from taking steps to cure the default, it also could impair the tenant's ability to establish an equitable defense to eviction. In light of our conclusion that the inclusion of nonrent charges rendered the notice defective, we need not determine whether a notice could be jurisdictionally defective if it is so misleading as to impair the opportunity to cure.