COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

DEFENDANT’S MOTION TO DISMISS

**(Action Prematurely Commenced)**

|  |  |
| --- | --- |
| **{{** courts[0].address.county **}}, SS** | {{ courts[0] }} |
|  | Docket Number: {{ docket\_number }} |
|  |  |
| {{ plaintiffs }} |  |
|  |  |
| v. |  |
|  |  |
| {{ defendants }} |  |
|  |  |

The Defendant ("Tenant") moves that this action be dismissed pursuant to Rule 12(b)(1) of the Mass. Rules of Civil Procedure because it was prematurely commenced. In support of this motion, the Tenant states the following:

1. This action is based on a notice to quit which was served upon the Tenant on {{ service\_date}} and which allegedly terminated the parties' tenancy as of {{termination\_date}}.
2. This summary process action was allegedly commenced by service of the summary process summons and complaint on {{ commenced\_date }}, as appears from the return of service. This was prior to the date that the notice to quit expired.
3. Therefore, this action has been prematurely commenced and must be dismissed. See G.L. c. 239, § 1; Decker v. McManus, 101 Mass. 63 (1869); Denuccio v. Caponigro, 259 Mass. 365 (1927); Alzamora v. Voguenel, Boston Housing Court No. 06-SP-03517 (Edwards, J., Dec. 9, 2006); Furtado v. Richardson, Boston Housing Court No. 04-SP-02768 (Edwards, J., Oct. 29, 2004); Ward v. Lawson, Boston Housing Court No. 00-SP-01561 (Chaplin, J., May 18, 2000); Lydon v. Curran, Boston Housing Court No. 99-SP-04821 (Daher, C.J., Dec. 14, 1999); Everett v. Baskin, Boston Housing Court No. 98-SP-04094 (Winik, J., August 28, 1998); Byda v. Taylor, Boston Housing Court No. 97-SP-00916 (Winik, J., March 13, 1997); McGonagle v. Lyons, Boston Housing Court No. 94-SP-03205 (Daher, C.J., September 26, 1994); Vargas v. Rodriguez, Northeast Housing Court No. 99-SP-01644 (Kerman, J., June 30, 1999); Comeau v. Pearson, Northeast Housing Court No. 95-SP-00380 (Kerman, J., March 29, 1995); Depillo-Sheehan Realty Trust v. Anderson, Southeast Housing Court No. 05-SP-00006 (Chaplin, J., February 17, 2005); McCarthy v. Holloway, Boston Housing Court No. 10-SP-3030 (Muirhead, J., Aug. 30, 2010).

Respectfully submitted,

{{ signature\_date }}

{%p if i == 'final' %}

{{ users[0].signature }}

{%p endif %}

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{{ users[0].address\_block() }}

{{ users[0].phone\_number }}

{{ users[0].email }}

I hereby certify that a

true copy of the above

document was served upon

Plaintiff (or Attorney,

if represented) by mail on

\_\_\_\_\_\_\_\_\_\_\_\_ (date) by

VERIFICATION[[1]](#footnote-1)1

The Defendant states that all facts asserted herein are true and correct and based on the Defendant's own personal knowledge, any documents attached hereto are true and correct copies, and the Defendant is competent to testify as to the factual matters stated herein.

Signed under penalty of perjury on {{ signature\_date }}.

{%p if i == 'final' %}

{{ users[0].signature }}

{%p endif %}

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

{{ defendants }}

1. 1 To the extent that this Motion to Dismiss under MRCP Rule 12 (b) is treated by the Court, as required by rule, as a Motion for Summary Judgment under MRCP 56, the Defendant submits this verification (while not required to do so under Rule 56) in support of any facts outside the pleading and the Notice to Quit attached thereto. [↑](#footnote-ref-1)