

Chapter 5

Rents

Legal Tactics: Tenants' Rights in Massachusetts
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How Much Rent Can a Landlord Charge.....	45
Paying Rent	45
1. Tenants at Will and Tenants with Leases	
2. Tenants at Sufferance	
What If the Rent Is Late.....	46
1. When Are Late Fees Illegal	
2. Stopping an Eviction for Non-Payment or Late Payment	
Illegal Rent Increases.....	47
1. Retaliatory Rent Increases	
2. Tenants with Leases	
3. Tenants without Leases	
4. Public and Subsidized Housing	
5. Condominium Conversions	
Receiving Proper Notice of a Rent Increase	49
Your Options Once You Receive a Rent Increase Notice	49
1. Pay the Increase	
2. Refuse the Increase and Look for Another Place	
3. Challenge the Increase	
Disputes About the Amount of Rent.....	51
Tax Escalator Clause.....	51
1. Is the Clause Legal	
2. Is the Landlord Overcharging You	
Paying Rent to a Condo Association.....	52

Rent

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Italicized words are in the Glossary

The purpose of this chapter is to describe common problems tenants face that involve rent and steps to take to deal with these problems.

How Much Rent Can a Landlord Charge

Rent is the amount of money you agree to pay a landlord for the use of an apartment. In return, the landlord agrees to provide you with a safe and habitable living space. In the majority of cases, the landlord can charge whatever the private market will allow, not what you can afford.

In public or subsidized housing or in a mobile home covered by a local rent control law, the amount of rent a landlord can charge is restricted.

- For more about mobile homes, see **Chapter 19: Mobile Homes**.
- For more about rent in public housing, see the booklet **Rent in Public Housing**, at: www.MassLegalHelp.org/housing/tenants-rights-in-public-housing.
- For more on subsidized housing programs, see **Housing Programs in Legal Tactics: Finding Public & Subsidized Housing**, at: www.MassLegalHelp.org/housing/finding-housing-booklets.

Paying Rent

When you pay rent depends upon whether you have a *lease*, and, if not, what kind of *tenancy* you have. If you do not have a written lease, to figure out whether you are a *tenant at will* or a *tenant at*

sufferance, read **Chapter 4: What Kind of Tenancy Do You Have**. Different rules concerning rent apply to each of these tenancies.

1. Tenants at Will and Tenants with Leases

As a *tenant at will* or a tenant with a lease, you are obligated to pay whatever rent you and your landlord have agreed upon. You must pay your rent in advance, on the date you and the landlord have agreed it is due.

2. Tenants at Sufferance

A *tenant at sufferance* is responsible for paying rent for the period of time she uses and occupies an apartment.¹ For this reason, the rent paid by a tenant at sufferance is often called a *use and occupancy* payment.

Unlike a tenant at will who pays rent in advance, a tenant at sufferance does not have to pay rent until the end of the month (or the rental period). If a tenant at sufferance leaves before the end of the rental period, she is required to pay only for the portion of time that she actually used the apartment.

As a tenant at sufferance, you do not necessarily have to pay the same amount of rent you paid if you had previously lived there with a lease or were a tenant at will. Under the law, you are required to pay what is called the *fair market value* of the apartment. The fair market value is what the apartment is reasonably worth, considering its size, location, and condition. This may be less—or more—than the rent you previously paid.

For example, if there are conditions in your apartment that violate the state Sanitary Code, they may lower the fair market value of the apartment.² Because tenants at sufferance are entitled only to a seven-day *notice to quit* if a landlord wants to evict them, the prospect of a future eviction on short notice may also decrease the value.³ On the other hand, if the apartment is in good condition and rents in the area have gone up, the fair market value may be higher than the rent you previously paid.⁴

What If the Rent Is Late

If you are late paying the rent, a landlord may try to charge you an extra fee or late penalty. It is against the law for landlords to charge late fees in some cases.

The landlord may also try to evict you for repeated late payment or for non-payment of rent. As a practical matter, most landlords do not send tenants *eviction* notices if they are several days late with the rent every once in a while. Even if a landlord does begin to evict you, you may be able to stop the eviction by paying the money you owe.

1. When Are Late Fees Illegal

Your landlord cannot charge you interest or late fees on late rent payments unless your *lease* or rental agreement specifically gives the landlord the right to charge late fees. If you have a written lease or tenancy at will agreement, check to see whether it has a late payment penalty clause. If there is no late payment penalty clause, you do not have to pay a late fee.

Even if there is a late payment penalty clause, a landlord cannot collect a late payment penalty until you are 30 days late with the rent.⁵ If the late payment penalty clause says that the landlord can collect a late fee before 30 days, the clause is illegal and you should not pay a late fee (even if you are 30 days late).⁶

If you have a lease, a landlord may also try to collect a late fee through what is called a

"discount clause." A discount clause is a clause in your lease that says your rent is discounted if you pay it on time. A discount clause is a late payment penalty clause in disguise and is illegal.⁷ If your lease has such a clause and the landlord tries to collect extra money from you, do not pay it. Pay only the "discount" rent. If a landlord continues to ask you for the money, tell your landlord in writing that, under Massachusetts law, this clause is illegal.⁸ For more information about late penalty and discount clauses, see the section on **Common Lease Clauses** in **Chapter 2: Before Moving In**.

For information about late fees in public housing, see the booklet **Rent in Public Housing**, available online at: <http://www.MassLegalHelp.org/housing/tenants-rights-in-public-housing>.

2. Stopping an Eviction for Non-Payment or Late Payment

a. Non-payment: You Have No Lease

If your landlord gives you a 14-day *notice to quit* for non-payment of rent, you may be able to stop the eviction by paying the rent owed. This is sometimes called "curing" the non-payment.

If you are a tenant at will, you can cure the non-payment and stop the eviction by paying all the rent you owe within 10 days of receiving a notice to quit. The only time that you do not have a right to cure is if, within the previous 12 months, you have received another 14-day notice to quit for non-payment of rent from your landlord.

b. Non-payment: You Have a Lease

If you have a lease, you can cure the non-payment and stop the eviction even after the landlord files an eviction case in court. You have up until the date your court papers (the *Answer* form) are due.

If you are able to, you should pay the rent owed before the date stated on the notice to quit. If

you do, the landlord cannot proceed with the eviction—even if this is not the first time you have cured a non-payment. Also, once you receive a *summons and complaint*, curing the non-payment becomes more expensive because you must pay the rent owed, plus interest and the landlord's costs for filing the eviction case.

c. Always Try to Cure

A landlord is required to accept the rent if you try to cure before the deadline. If your landlord refuses to accept the rent from you, be sure to put in writing that you are offering to pay.

But even if you miss the deadline to cure the nonpayment, you can still try to convince your landlord to accept your rent and drop the eviction case. Often, landlords agree to this because their real interest is in receiving the rent money.

d. Eviction for Repeated Late Payment

If a tenant pays rent late again and again, the landlord may try to evict the tenant for repeated late payment of rent. A landlord cannot use a 14-day *notice to quit* to evict you for late payment of rent. The law requires the landlord to give you 30 days' notice.

If a landlord tries to evict you for repeated late payment and there are good reasons why your rent is always late, you should explain them to the landlord and the judge. For example, if you have a disability and do not receive your SSI income until the 3rd of the month, you should ask the landlord and the judge for a *reasonable accommodation* of a later due date for your rent. For more information on reasonable accommodations, see the section called **Discrimination Based on Disability** in **Chapter 7: Discrimination**. For more information on defending yourself against an eviction, see **Chapter 13: Evictions**.

Illegal Rent Increases

One of the most common problems tenants face is unfair and unaffordable rent increases. In some cases, these increases may be illegal. In other cases, a landlord may not have properly notified you about the increase.

In all cases, whether a rent increase is legal or illegal, a landlord cannot increase your rent without your agreeing to pay it.⁹ The following sections explain when a rent increase is illegal or not.

1. Retaliatory Rent Increases

Your landlord cannot raise your rent in *retaliation* for your asserting your rights. Specifically, the law says that your landlord cannot raise your rent because you have:

- Filed a lawsuit against your landlord or defended yourself successfully in an eviction case;
- Filed a discrimination complaint against your landlord with a government agency;
- Organized or joined a tenants union;
- Reported violations of the state Sanitary Code or other housing laws to the landlord, anyone who works for the landlord, or a housing inspector; or
- Paid some of your rent to a local utility company after your landlord stopped paying utility bills that were her responsibility.

If you believe that your landlord is raising your rent in retaliation for any of these actions, you can refuse to pay the increase. If you refuse to pay the increase, your landlord may try to evict you for non-payment of rent. This may not be a wise thing to do on your landlord's part.

If your landlord has increased your rent within six months of your taking any of the actions listed above, the law presumes that your landlord is retaliating against you and allows you to sue

your landlord for up to three months' rent (or the actual damages you suffer, whichever is greater), plus the cost of your attorney's fees. If a case goes to court, the burden is on the landlord to prove that she was not retaliating against you.¹⁰ Even if more than six months have passed, you may still be able to prove that the rent increase is retaliatory, but you will have a harder time proving the retaliation.

Be sure to document the retaliation. Collect information and documents about the actions you took to protect your rights, how your landlord learned about them, and anything she did or said to show she was unhappy with the situation. For more information about retaliation, see **Chapter 13: Evictions** and **Chapter 14: Taking Your Landlord to Court**.

2. Tenants with Leases

If you have a written lease and do not have a housing subsidy, your landlord cannot increase your rent during the period of your lease, even if you and your landlord agree to an increase and put this agreement in writing.¹¹ For example, if you signed a one-year lease that runs from September 1, 2008 to August 31, 2009, your landlord cannot raise your rent in January 2009.

But there is one exception to this rule. If your lease has what is called a "tax escalator clause," your landlord may be able to increase your rent during the term of your lease if local property taxes go up. For more information, see the section in this chapter called **Tax Escalator Clause**.

If you have a lease, your landlord must send you proper notice of a rent increase before the date the lease must be renewed. If the landlord does not send you notice of a rent increase until after you have either renewed your lease or it has automatically extended for another year, the increase is illegal and you do not have to pay it. The landlord must wait another year or until your lease term expires before she can change the rent. To figure out whether your lease renews itself, see the section called **How Long**

Is Your Lease Valid in **Chapter 4: What Kind of Tenancy Do You Have**.

3. Tenants without Leases

If you are a *tenant at will* and have no lease, your landlord can propose a rent increase any time—unless the increase is in *retaliation* for your asserting your rights. See the section in this chapter called **Retaliatory Rent Increases**. To raise your rent, a landlord must give you a proper notice of an increase. See **Receiving Proper Notice of a Rent Increase** in this chapter.

4. Public and Subsidized Housing

If you or your landlord has a housing subsidy, the landlord can increase the rent only if the rules of the housing program allow it. If you have a question about an increase or want to challenge it, you should start by learning more about the particular housing subsidy program that applies.

For more information about housing programs and the government agencies that administer them, see **Housing Programs in Legal Tactics: Finding Public & Subsidized Housing**, at: www.MassLegalHelp.org/housing/finding-housing-booklets.

For information about rent increases in public housing, see the booklet **Rent in Public Housing**, at: www.MassLegalHelp.org/housing/tenants-rights-in-public-housing.

5. Condominium Conversions

If you have received a notice that your apartment is being converted into a condominium, your landlord cannot request a rent increase of more than 10% or the increase in the previous year's Consumer Price Index, whichever is less.¹² Many times, landlords attempt to empty buildings by significantly raising the rent without telling the

tenants that they plan to convert them to condominiums. This may violate the law. If you suspect that your landlord may be converting your building to condominiums, see **Chapter 20: Condominium Control**.

Receiving Proper Notice of a Rent Increase

Your landlord must send you a written notice telling you that she wants to increase the rent. If you are a tenant at will, you must receive this notice at least 30 days (or one full rental period if it is longer than 30 days) in advance.¹³ Thus, if you pay rent on the first of the month and your landlord wants a rent increase to be effective as of September 1, she must send you notice of a rent increase prior to August 1. If she sends you a rent increase notice on August 1 or any time after August 1, you do not have to pay the rent increase (if you choose to pay it at all) until October 1.

Sometimes a landlord will send a notice to quit along with, or as part of, the rent increase notice. A notice to quit is the first document that the law requires a landlord to send you if she wants to start the eviction process. The notice or notices may say that your landlord is *terminating* (ending) *your tenancy* at the old rent and offering you a new tenancy at a higher rent. Landlords often send both notices together so that they can begin an eviction case in court if the tenant refuses the increase.

A notice that only requests a rent increase does not terminate your tenancy.¹⁴

If you get a notice to quit with your rent increase notice, you do not have to leave by the date on the notice, even if you choose not to pay the rent increase. For more information on refusing to pay a rent increase, see the next section of this chapter. You should also be sure to read **Chapter 13: Evictions**, if you receive a notice to quit.

Your Options Once You Receive a Rent Increase Notice

When you receive notice of a rent increase, you have three options:

- Pay the rent increase and stay,
- Refuse the increase and look for another place to live, or
- Stay and challenge the increase

1. Pay the Increase

Once you pay a proposed rent increase, you may be stuck with it, even if the original notice was not legal. This is because, if you later choose to challenge the increase in court, a judge may say that you have agreed to the increase by paying it.¹⁵

If you received a notice to quit with your rent increase notice, your landlord will not be able to use it to evict you once you start paying the higher rent.

After getting notice of an increase, if you do **not** have a written lease, you may want to ask for one in order to lock in your rent for a period of time.

2. Refuse the Increase and Look for Another Place

If you do not want to pay the increase or cannot afford to pay it, you should continue to pay the old rent while you look for a new apartment. If you refuse to pay the increase and continue to pay your old rent, your landlord is required to accept the old rent. She can, however, start the eviction process against you. But, as long as you offer to pay the old rent, your landlord can only start the eviction process by sending you a 30-day *notice to quit* for a *no-fault eviction*. She cannot send you a 14-day notice to quit and try to evict you for non-payment of rent. **You do not owe a rent increase you have not agreed to pay.**

If your landlord gives you a notice to quit but then accepts the old rent amount without clearly telling you that she still plans to evict you or that your rent money is accepted "for use and occupancy only," then she may have given up the right to evict you using this notice. She can still try to evict you, but she must first send you a new notice to quit.

Remember: If you receive a notice to quit, you do not have to move by the date stated on the paper. A landlord must get a court's permission to move you out. If your case goes to court and a judge eventually gives the landlord permission to evict you, you can ask the judge for up to six months to find another apartment. Elderly or disabled tenants may ask for up to a year to find a new apartment.¹⁶

If your landlord does take you to court and a judge gives the landlord permission to evict you, a judge may order you to pay the *fair rental value* of your apartment until you move. This amount could be more or less than your old rent, depending on the condition of your place. Make sure you let the court know about any problems in your apartment so the rent can be reduced. For more information, see the section in this chapter called **Paying Rent: Tenants at Sufferance**.

For more information about your rights in an eviction case, see **Chapter 13: Evictions**.

3. Challenge the Increase

If you feel that the landlord's proposed rent increase is illegal or unreasonable and want to keep your apartment, there are a number of ways you may be able to challenge or renegotiate the increase.

a. Renegotiate Unfair Increases

While landlords are not legally required to negotiate with tenants, you may be able to convince a landlord to reconsider the amount of the increase. If you have a good relationship with the landlord, she may want to keep you as a tenant. You may also be able to persuade a

landlord that, because of certain bad conditions in the apartment, you should not have to pay an increase.

b. Get Other Tenants to Fight the Increase

If you live in a building with other tenants, try to find out whether they, too, have received a rent increase notice. If you are the only one who has received notice, consider asking your landlord why this is so. If others have received notices, you may want to talk to them about how you can, as a group, put pressure on the landlord not to raise the rent as much or at all. The more people there are challenging a rent increase, the more likely a landlord may be to agree to lower the increase. For more information about organizing strategies, see **Chapter 10: Getting Organized**.

c. Withhold Your Rent

If there are poor conditions in your apartment that violate the state Sanitary Code and you have notified your landlord about these conditions, you may legally withhold some or all of your rent. **There are specific requirements that you need to follow before you withhold your rent.** For information about how to properly withhold your rent, see **Chapter 8: Getting Repairs Made** in the section called **Withholding Rent**.

This strategy may bring the landlord to the bargaining table to discuss both a repair schedule and lessening the amount of the proposed rent increase. In return for necessary repairs and a more reasonable rent increase, you could agree to stop withholding your rent.

If you withhold rent, your landlord may try to evict you for non-payment of rent. But if you have properly withheld your rent, you will have protected yourself against being evicted. You will also have a strong claim that your landlord is evicting you in *retaliation* for withholding your rent.

d. Document Why the Rent Increase Is Illegal

If you believe that your landlord has illegally raised your rent and you want to stay in your apartment, the best thing to do is to collect evidence that will prove that the increase is illegal. For example, if you feel that the landlord has *retaliated* against you for reporting violations of the state Sanitary Code, make sure you have a *certified* copy of a housing inspection report signed by the inspector who performed the inspection and copies of any letters that you sent the landlord about the conditions. If your landlord sends you an eviction notice, you will then be prepared to defend yourself if your landlord ever decides to take you to court.

Disputes About the Amount of Rent

If your landlord has incorrectly calculated your rent, not credited you for rent you've paid, or charged you for damages that you have not caused, there are steps that you can take to try to resolve the problem.

The simplest way is to just pay the landlord what you think you owe her. Along with your rent, send the landlord a letter explaining why you do not owe her the amount she claims you owe. You should also write on the back of your check: "Endorsement or cashing of this check constitutes payment in full of all obligations the tenant owes to the landlord for [fill in specific month and year] rent." If your landlord cashes the check without writing on it that she is "reserving her rights" to claim that you still owe more money, then she has accepted what you think the rent is and given up her ability to dispute the amount, and you have resolved your problem.¹⁷

Even if your landlord does reserve her right to take you to court for not paying the higher rent amount, she may be unlikely to do that if the difference is small. If she tries to evict you for rent you do not owe, you will have a *defense* to the

eviction. For more information on evictions, see **Chapter 13: Evictions**.

If, after you have taken steps to resolve the disputed amount of rent, your landlord continues to claim that you owe her money, you can file a lawsuit against her for unfair and deceptive acts. You can also raise this claim in an eviction case for non-payment of rent. See **Chapter 14: Taking Your Landlord to Court** for information about unfair and deceptive practices. If you can, it is best to put the disputed amount of rent in a bank account that is separate from your other money. Then, if you go to court, this will improve your credibility before a judge.

Tax Escalator Clause

If you have a lease, one way that a landlord can raise your rent before the term of your lease ends is through what is called a "tax escalator clause." A tax escalator clause says that if your landlord's property taxes go up, she can increase your rent.

Back when property taxes were going up rapidly, these clauses were a way for landlords to raise the rent.

If your landlord does demand a payment from you under a tax escalator clause, you should: (1) read your lease to see whether the clause is legal; and (2) make sure the landlord is not overcharging you.

Note: In 1980, Massachusetts passed "Proposition 2½," which required towns and cities to limit the amount by which they could increase property taxes.¹⁸ Your landlord's property taxes, however, can still go up.

1. Is the Clause Legal

The law requires that tax escalator clauses be written in a certain form.¹⁹ If yours is not, it may be illegal and your landlord may not be able to raise your rent. The language of a tax escalator clause must contain three things:

1. A statement that you are obligated to pay only that portion of the increased property tax as your apartment bears to the whole property being taxed. For example, if you live in a three unit building and the units are all the same size, you would be obligated to pay only one third of the increase for the whole building.
2. The exact percentage of any tax increase that you are obligated to pay.
3. A statement that if your landlord gets a tax refund, or tax abatement, you will receive a proportionate share of that reduction (less any lawyer's fees that the landlord paid in getting the reduction). For example, if the city sends your landlord a refund after she has already paid her taxes, you would be entitled to a proportionate reduction in rent.²⁰

Read the text of your lease carefully. If your lease has a tax escalator clause that clearly does not contain all three items above, the clause is illegal and your landlord cannot use it to increase your rent.²¹

2. Is the Landlord Overcharging You

If the tax escalator clause is legal, you still need to make sure that your landlord is not overcharging you. Go to your local tax assessor's office and ask there whether taxes on the property you rent have gone up and whether your landlord got an *abatement*. Abatements are reductions that property owners get after they pay their taxes and the tax assessor determines that the original tax assessment was too high.

If the taxes have gone up, find out by how much and then figure out whether your landlord calculated your increase correctly. If your landlord has received a tax abatement, you will need to figure out how much the landlord owes you.

Paying Rent to a Condo Association

If you rent a condominium, you pay rent to the owner of the condo, who is your landlord. The owner is probably required to pay a monthly condo fee to the building's condo association. If your landlord stops paying the monthly condo fee, or if she refuses to pay other one-time condo charges, called assessments, the condo association may, by law, ask you to pay your rent to the condo association instead of paying it to your landlord.²²

Before it can collect rent from you, the condo association must wait until the landlord's condo fee payments are at least 25 days late. It must then send a notice to the landlord explaining that it intends to collect the rent for her unit. If the landlord does not respond to the condo association's notice within 10 days, or if she admits that she owes the association money, then the association is allowed to collect rent from you.

If a condo association asks for your rent, you should ask it to put the request in writing. You should also ask for copies of the notice the association sent to your landlord and any written response that your landlord gave to the association. If the landlord did not respond to the condo association's notice in 10 days, then the condo association can collect all or some of your rent each month until you have paid off the amount that the association claims the landlord owes. If your landlord did respond to the association's notice and admitted that she owed some but not all of the money, then the association can collect rent from you only until you have paid off the amount the landlord admitted was owed. If the landlord responded to the condo association in time but denied that she owed any money, then the condo association cannot collect rent from you. No matter what your landlord does, the condo association cannot ask you to pay more than your regular rent.

A landlord cannot evict you or retaliate against you for paying rent to a condo association under

the law.²³ To protect yourself, be sure to get receipts for any rent payments that you make to a condo association.

Endnotes

1. G.L. c. 186, §3.
2. *Indiciani et al. v. Sansone*, Boston Housing Court, 88-CV-24797 (Smith, J., July 26, 1991) (uninhabitable conditions reduced fair rental value of apartment to \$0).
3. *Lowell Hous. Auth. v. Save-Mor Furniture Stores, Inc.*, 346 Mass. 426, 431 (1963) (possibility of eviction on short notice may reduce fair rental value).
4. *Gordon v. Sales*, 337 Mass. 35 (1958) (fair rental value may be higher than the rent being charged based on local real estate market conditions).
5. G.L. c. 186, §15B(1)(c); G.L. c. 93A, §2; 940 C.M.R. §3.17(6)(a).
6. G.L. c. 186, §15B(1)(c); G.L. c. 93A; 940 C.M.R. §3.17(3)(a)(3). Also, you cannot be charged a constable's or other fee for service of a notice to quit that is for rent that is less than 30 days late. *Commonwealth v. Chatham Development Co., Inc.*, 49 Mass. App. Ct. 525 (2000); *Copley Management v. Andersen*, Boston Housing Court, 08517 (Smith, J., Nov. 29, 1990).
7. The Boston Housing Court has noted that such a discount clause "appears to be, in substance, a late fee charge which is prohibited by G.L. c. 186, §15B(1)(c)." *Patriquin v. Atamian*, SP-19648-K (King, J., Aug. 27, 1981).
8. G.L. c. 186, §15B(1)(c), states that "[n]o lease . . . shall impose any interest or penalty for failure to pay rent until thirty days after such rent shall have been due."
9. *Williams v. Seder*, 306 Mass. 134 (1940).
10. G.L. c. 186, §18; G.L. c. 239, §2A.
11. *Torrey v. Adams*, 254 Mass. 22 (1925) (holding that a written agreement to increase the rent was invalid if the landlord gave the tenant no additional rights in exchange for the increase).
12. St. 1983, c. 527, §4(e); as amended by St. 1989, c. 709, §18.
13. G.L. c. 186, §§12-13.
14. *Williams v. Seder*, 306 Mass. 134 (1940).
15. If the notice was not proper, you should argue that the agreement is void because the landlord didn't give up anything in exchange for the increase. *Torrey v. Adams*, 254 Mass. 22 (1925). "If the landlord did not terminate your tenancy at the old rent when she asked you to pay the higher rent, then you can argue that the increase is unenforceable because the landlord did not give up any rights in exchange for the increase. The landlord did not give you any "consideration" for the increase. You may also be able to argue that your agreement to pay the higher rent is unenforceable because it had the effect of waiving your right to proper notice in violation of G.L. c. 186, §15A.
16. G.L. c. 239, §9. If the judge grants your landlord's request for the eviction but gives you time to look for another place to live, she can require you to pay the increase in the meantime. *Gordon v. Sales*, 337 Mass. 35, 37 (1958).
17. *Jones v. Webb*, 320 Mass. 702 (1941)(landlord waived notice to quit when he cashed check on which tenant had written, above landlord's endorsement, that check was for "rent"). See also *Staples v. Collins*, 321 Mass. 449, 451 (1947) (landlord who accepted rent without protest could not deny that acceptance of rent created a tenancy at will). If the landlord does write on the check that she reserves her rights, the tenant can still argue that this was ineffective notice and that a separate letter or receipt should have been provided.
18. G.L. c. 59, §21C, as amended by St. 1980, c. 580, §1.
19. G.L. c. 186, §15C.
20. G.L. c. 186, §15C.

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21. "Any provision of a lease in violation of the provisions of this section shall be deemed to be against public policy and void."
G.L. c. 186, §15C.
 22. G.L. c. 183A, §6(c).
 23. G.L. c. 183A, §6(c).

