

The elements of a contract



1. 0 Introduction

I am the Human Resource Manager for a recording company. My director who name Mr. Abu requested me to rent an apartment accommodation for three employees who came from oversea to stay in my state. So I am as the Human Resources Manager, I am expected to deal with the landlord.

I need to find out the main element for binding a valid house rent contract. Apart from that, I need to brief the main element to my directors Mr. Abu and design a contract to show to Mr. Abu. Then, to assume that the landlord claim that my employees was damage the kitchen cabinets after one month they have stay in the rented apartment, so I am expect to write a report to Mr. Abu on what kind of legal solution that might can be taken by the landlord and how I am go to solve the situation and I need to justify my answer to avoid my legal liability on such damage to property in apartment.

Apart from that, I need to describe the nature contractual liability arising from the damages that found in the house and whether tenants are partially or wholly liable for damages done to the premises.

2. 0 The Main Element for Binding a Valid House Renting Contract

2. 1 Offer

An offer or proposal for the creation of an agreement is necessary. Section 2(a) Contract Act 1950 provides that “ if a person means another who is willing to do or omit to do something to the consent of the other as the act or abstinence could be obtained, it is said, on to make a suggestion”. The first

part of the Section 2(c) in the Contracts Act 1950 calls the person who make the proposal ' promisor'.

Under the contracts Act 1950 and English Law, an offer or proposal is something which is capable of being changed into the agreement by its acceptance. The proposal should be a definite promise to be bound provided certain specified terms that are accepted. The promisor or also called as the offeror must have stated his willingness to an obligation to undertake certain specific terms, leaving the option of its refusal or acceptance to the offeree, the person to whom that offer is made. Then contract is complete once the offeree is accept the offer. (GILLIES, P, 2004). Thus, offer is one of the parties made a promise to do or prevent from doing some specified action in the future. (Jec. un. edu, 2015). Apart from that, the offeror may make the offer to a particular person or to the whole world.

2. 2 Acceptance

To form a binding valid house renting contract, the offer must have an acceptance. Acceptance of an offer is the offer was accept unambiguously. The acceptance must be an agreement to each of the terms of the offer. Section 2(b) of the contract Act 1950 provides that when a person made signifies his assent thereto to whom, the proposal is said to have been accepted. When a proposal was accepted, it will become a promise. Apart from that, the person that who is accepted the proposal is called ' promisee'.

In additional, acceptance must be communicated to the offeror. The communication of acceptance may be express or implied. (Gulshan, Kapoor and Paliwal, 2008). Furthermore, acceptance of any promise which is made <https://assignbuster.com/the-elements-of-a-contract/>

in performance or words that could say to be express. In contrast, acceptance that made other than words and performance is say to be implies. For proposal to be changed in a promise, the acceptance of the proposal must be absolute and unqualified, so that the acceptance is complete consensus. Then, if the parties are still bargaining, agreement is still not yet formed and the proposer cannot prescribe silence as a manner of acceptance.

2. 3 Intention to Create Legal Relations

A statement to be an offer, it must be made with the intention that it be binding upon acceptance. It is also necessity that all the parties to an agreement have an intention to create legal relations which is meaning the parties intend the legal consequences attach to their agreement. (JONES, L, 2013). In short, the parties intend that the agreement will be binding with recourse to some external judge for this enforceability.

In determining whether the parties intend their agreement to be legally binding, the courts are guided by two presumptions such as parties to a domestic or social agreement do not intend to be legally bound and parties to business agreement intend to be legally bound. These are presumptions only and can be rebutted by sufficient evidence to the contrary.

2. 4 Consideration

Considerations is something of legal value that each party gives to the contract to bind the agreement. (Goldman and Sigismond, 2014). So, the consideration is especially important where the agreement involves a

promise to the act in a particular way in future. In exchanges where there is an immediate, simultaneous transfer of, for example, good for money, the doctrine of consideration applies in theory but rarely will causes practical problems.

An agreement without consideration can consider is void. Apart from that, consideration need not be adequate and not be too vague. The words ‘consideration’ defined as when, at the desire of the promisor, the promisee or any other person has done or refused from doing, or does or refused from doing, or promises to do and refused from doing something, such act or abstinence or consider as promise is called a consideration for the promise.

2. 5Certainty

Certainty is the terms of a contract are certain when each of the provision is described or explained properly and clearly set forth. (Definitions. uslegal.com, 2015). The terms of an agreement cannot be vague but must be certain. An agreement which is not capable of being made certain or uncertain is consider as void. An enforceable contract requires certainty of terms. Which means for an agreement to be a contract, it must be apparent what is the terms of the contract are. If the important term in the agreement is not settled, the agreement is not a contract.

2. 6Capacity

Capacity to contract is legal and mental ability to understand the nature of an enforceable agreement. (Goldman and Sigismund, 2011). Furthermore, capacity is mean that the legal competence of a person to enter into a valid

contract. The parties entering into a contract should be also competent to contract, that is to said, they must have the legal capacity to do so. Capacity refers to the ability of the parties to a contract to fully understand its terms and obligations. For example, a contract made with person mentally unsound, a bankrupt person and person under age 18 in Malaysia is void.

Every person is competent to a contract if who is of the age of majority which is eighteen years old to the law to which he is subject, and who is healthy and not disqualified from contract by a law which it is subject there. However, there are some exceptions to this rule which are Contracts for necessities, Contracts of scholarship and Contracts of insurance as well.

3. 0 The Damaged level of kitchen by Alex RecordingSdnBhdemployee

Alex Recording Sdn Bhd employees have damaged a part of the premise which is kitchen's cabinet. The damaged cabinet has been left for a long period without any maintenance or repair.

3. 1 Legal action take by landlord

Due to Alex Recording employee Sdn Bhd employees had damaged the kitchen's cabinet and left for a long period without any maintenance or repair. Therefore, the landlord is going to take legal actions towards Alex Recording Sdn Bhd based on the rental agreement's conditions as follows:

(Please refer to Appendix – 1. 1 Rental Agreement number 11 and 12)

3. 2 Landlord takes action to against AlexRecording SdnBhd

The landlord will take civil action against Alex Recording Sdn Bhd due to Alex Recording Sdn Bhd's breach of contract cases. According to wiseGEEK (no date) has reported that a civil action is usually brought for the purpose of resolving private legal issues that arise between business, people, or other entities. There also mentioned some of the most common kinds of civil actions include family law proceedings, civil rights violations, breach of contract cases, and personal injury lawsuits.

Landlord can't take criminal action against Alex Recording Sdn Bhd due to criminal action is brought by government (society) to determine whether the guilty person committed the unlawful act and to determine the accused person's punishment reported by NDSU (no date). NDSU also reported that criminal action punishment will be imprisonment or a fine paid to the government, and the case of criminal action such as Armed Robbery.

3.3 The Argument to against landlord

According to Alex Recording Sdn Bhd employees said that the kitchen's cabinet was broken before they move in. However, Alex Recording Sdn Bhd employees still used the cabinet but without repair it. That mean that the cabinet is not broken by Alex Recording Sdn Bhd employees and it should by someone else who had rented the premises before. Basically, Alex Recording Sdn Bhd is not liable to pay the repair fee to the landlord due to the cabinet is not broke by their employees and also the Rental Agreement didn't notice or mention that the RESIDENT should check all the items is on the good condition before move in the premises.

3.4 Element of the contract between Alex Recording Sdn Bhd and landlord

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- Offer – Is a proper offer.
- Acceptance – Is a proper acceptance.
- Consideration – The agreement have consideration.
- Certainly – The agreement is certain.
- Capacity – Both parties have legal capacity.
- Intention to create legal relations -The agreement is intention to create legal relations.

(Please refer to Appendix – “ 2. 1 Case law” to check the similar case)

4. 0 Contractual Liability for the damages of house

The employees of Alex Recording have damaged the kitchen’s cabinet. Hereby, there are several elements of contract which has existed in this case. The elements are offer, certainty, consideration, capacity, intention to create legal intention as well as acceptance.

4. 1 Offer

There’s a valid offer which offered by Alex Recording, which proved by the signature of Director of Alex Recording. Moreover, terms and condition has written down in the contract by offering the landlord to have the signature.

4. 2 Acceptance

The acceptance in this situation is valid. We assume that the landlord has read the terms and condition only the landlord sign the contract. Meaning to say that the landlord has agreed to the contract before the landlord sign and accept this offer by Alex Recording.

4. 3 Consideration

There's consideration in this contract which state in the first terms and condition in the contract, that the Alex Recording will pay RM1300 in advance for the first month as well as the security deposit of RM300, in total is RM2050 are to be paid to the landlord, Lim Wei Shang.

4. 4 Certainty

This contract is definitely certainty and there's no vague terms and condition written, and labeled neatly.

4. 5 Capacity

The offeror and offeree has been officially 18 and above. Apart from that, both of the parties are not mentally unsound. Furthermore, they're not in bankrupt. Thus, this is a valid contract.

4. 6 Intention to create legal relation

In this case, there's an intention to create legal relation which is business relation between landlord and director.

Our party will only agree to take the responsibility of partially liable since the cabinet in the kitchen is already not in a good and well condition before we starting the agreement contract and entered into rented the room. We will only take half of the responsibility as we are only partially liable for the damage of kitchen cabinet. The cabinet is too old can be see it was use many year and it is the landlord's responsibility in change of a brand-new or a well-fixed cabinet before renting the room out. The landlord should also be

partially liable for the damage as the landlord should take care of the safety of the customer. The landlord had already broken a condition called contributory negligence. As such, we will only be partially liable of the damage as we should not be the only party that should be responsible for the damage. As the supported by judicial precedent which is previous case law.

(Please refer to Appendix 3. 1 Case Law to check the similar case)

5. 0 Conclusion

Law can define as the body of customary rules recognized by a community as binding. Apart from that, law is defining as a body of rules which are enforced by the state. Contract may be defined as an agreement enforceable by law. Contract is an agreement which is legally binding between parties. The main element of law of contract is offer, consideration, certainly, capacity, acceptance of an offer and intention to create legal elations.

In conclusion, Alex recording Sdn Bhd only partially liable on the damages of kitchen cabinet because of the kitchen cabinet is already damages before employees of Alex recording is starting the agreement and entered the rental apartment. The landlord should also be partially liable for the damage as the landlord should take care of the safety of the customer.