

Ready Not Ready Enforcing Promises of Tenancy Agreement: An Explanation to Non-Law Students

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Abstract

A tenancy agreement is normally created between a landlord and a tenant. It can be oral or in writing. When the parties agree with the terms and conditions in a tenancy agreement, they have to enforce their promises. Problems would arise if a tenant is a student and they are not ready to carry the commitment as a tenant. Other than that, as a 'pampered' child and a first timer dealing with a contract, they would just sign the tenancy agreement without reading the terms and conditions. Perhaps they ignored contractual obligations because they are unaware of and reluctant to understand the implications of dealing with a contract. This usually occurs when the students need off-campus accommodations during their studies. The scenario gets worse if there is a limited number of off-campus accommodations and students immediately agree to pay the deposit and sign the tenancy agreement. Some of them simply agree without first inspecting the accommodation. The question thus arises whether a student (tenant) is ready for the contractual obligations and understands the consequences of breach of contract. The objectives of this paper are to explain the contractual obligations of a landlord and a tenant; to discuss the elements of a valid contract in Malaysia, and to provide non-law students with an understanding of enforcing promises in a tenancy agreement, especially after two years of studying at home due to the Covid-19 outbreak. This study believes that it is a perfect time to enlighten and educate the target audience about the agreement, contract, and implications, particularly for first-time students experiencing staying in off-campus accommodation. Therefore, it is hoped this article provides valuable knowledge, particularly to landlords and tenants, as one of the educator's responsibilities is to share knowledge with others around them.

Keywords: Promises, Tenancy Agreement, Non-Law Students, Contract, Covid-19 Outbreak.

Introduction

The Covid-19 outbreak transformed the landscape of education. Students learned online without having to worry about finding accommodation near their campus or institution. Generally, higher education institutions will provide accommodation to students with facilities to cater the needs of students and they must adhere to the rules set by the

institutions. However, the capacity of the accommodation on campus is limited and some students have to find it outside (Abdul Razak et al., 2017).

For the coming semester i.e. October 2022, UiTM Perak Branch Tapah Campus welcomes over 5200 students to return to campus. The campus has a total capacity of accommodation for 3388 students. Hence, 1814 students need to find off-campus accommodation. Between the age of 18-23, they will experience being responsible for contractual obligations by enforcing the promises they make. Some of them will experience a situation of undue influence, fraud, cheating, or scam when looking for accommodation or entering into a tenancy agreement. Thus, educators play an important role in educating students of the legality of contracts and the implications of a breach of contract. Therefore, this study aims to explain the contractual obligations of a landlord and a tenant; to discuss the elements of a valid contract in Malaysia; and to provide non-law students with an understanding of enforcing promises in a tenancy agreement. The purpose of this article is to explain contractual obligations as one of a law lecturer's responsibilities to disseminate information about promises, agreements, and contracts. In addition, it is to enhance awareness, particularly for non-law students, of the importance of enforcing contractual obligations as stated in the tenancy agreement.

Methodology

The approach of this study is purely qualitative where it is based on a library research and involving conceptual discussion and legal analysis. Referring to Fitri et al (2017), a conceptual analysis of the study attempted to identify the legal issues and the legislation. This article is a conceptual paper that employs doctrinal research to explain the contractual obligations of a landlord and a tenant; to discuss the elements of a valid contract in Malaysia, and to provide non-law students with an understanding of enforcing promises in a tenancy agreement. According to Abdullah (2018), the research is qualitative because it does not engage with statistical data analysis. The primary data of this study are based on Contracts Act 1950, law cases and secondary data from various literature. The discussion in this paper is limited to non-law students and the authors choose the research location in Tapah, Perak due to experience in dealing with tenancy agreement in this rural area. Other than that, the authors are also educators in UiTM Perak Branch, Tapah Campus.

Discussion

A tenancy agreement creates rights and obligations between a landlord and a tenant. This study discusses the tenancy agreement, the parties' contractual obligations and rights, and the elements of a valid contract in Malaysia for non-law students to comprehend, particularly in upholding their promises based on the tenancy agreement that they have agreed to with a landlord. In Malaysia, the legislation governing contracts is the Contracts Act 1950 ("hereinafter referred to as "CA 1950") (Pheng, 2005). Hence, the contract explanation focusing on the tenancy agreement in this study will also relate to the CA 1950.

Tenancy Agreement

Sufian (2012) explained that any tenancy formed between an individual landlord and a tenant is referred to as a private residential tenancy. The tenancy agreement can either be oral or written. As contended by Daniel et al (2012), tenancy agreement is a legal document that specifies the relationship between a landlord and a tenant. The information contained in a tenancy agreement in Malaysia is generally the landlord and tenant's name and identification

card number; the address of the property; the landlord and tenant's addresses; the date of tenancy; the landlord and tenant's responsibilities, obligations, duties, and rights; the rental fees; the amount of security deposit required; the period of tenancy; the rules of tenancy; and the consequences of breach of the tenancy agreement.

Since Malaysia has no specific statute that governs leases and tenancies, conflicts or any disputes between landlords and tenants might be referred to the housing law, consumer law, or contract law depending on the issues that arise. Because there are no specific regulations or guidelines in Malaysia, the terms and conditions of the tenancy agreement may vary from one to another, and some landlords refer to and hire a lawyer to prepare the tenancy agreement. Normally, the landlord is the party that prepares the tenancy agreement, and the terms and conditions are often used to protect his interest. As a party in the contract, when the landlord gives the tenancy agreement to be read and signed, the tenant has the right to discuss it with the landlord, especially if there are imbalanced or unfair terms and conditions that detriment the tenant. There should be win-win terms and conditions in any tenancy agreement.

Contractual Obligations and Rights of a Landlord and a Tenant

The rights and obligations of a landlord and a tenant are determined by the terms and conditions of a tenancy agreement and the duties of the parties is governed by common law (Sufian, 2012). According to Daniel et al (2012), the tenancy agreement specifies the tenant's duties and obligations to the landlord and *vice versa*. This study contends that fiduciary duty is also important to both parties in performing their promises in the tenancy. The basis for fiduciary duties is trust. According to Valente (2010), a promise is an expression of willingness to perform an obligation while a contract consists of a promise made in such a way that the law allows as sufficient to enter into a legally enforceable obligation. By virtue of section 2(b) of the CA 1950, "*contract*" is an agreement enforceable by law. Therefore, this study argues that based on the intention of the parties, they will create a contract consisting of a promise and bound by the terms and conditions in the tenancy agreement. Hence, there are legal consequences when one party fails to fulfill any terms and conditions or performs contractual obligations.

Breach of Terms and Conditions in a Tenancy Agreement

Contract laws only apply to parties who have implied their intention to be bound (Wilkinson-Ryan & Hoffman, 2015). According to McKendrick (2016), the terms and conditions are important to the parties in a contract because they establish the right and obligations. A breach of contract occurs when one party in a tenancy agreement fails to comply the terms and conditions of the agreement. This means that the breach party fails to perform and enforce the promise. For example, if the landlord failed to deliver a promised accommodation to a tenant as stated in the terms and conditions of the tenancy agreement, he is in breach of the contract. On the other hand, if the tenant delays the paying of the rental fee; to the landlord, without just cause and reasonable excuses, he is said in a breach of the contract.

Elements of a Valid Contract in Malaysia

To test the validity of contract in Malaysia, there are elements to be proved. According to Hussain (1993), there are elements of a valid contract as specified by statute and common law such as agreement, consideration, intention to create legal relation, capacity, certainty,

and lawful objects. In addition, formality (if required by law) is one of the elements of the contract (Jalil & Pointon, 2004).

i. Offer

An offer is a proposal made by the offeror on certain conditions, along with a promise to be bound if the offeree agrees to the terms of the offer. By virtue of section 2(a) of the CA 1950,

“when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to the act or abstinence, he is said to make a proposal.”

An offer can be described as an expression of the intention of the offeror to conclude a contract with the offeree. There are five conditions of an offer which are (i) it can be made to anyone and everyone; (ii) the form of the offer can be oral, in writing, or by conductor combination of this method; (iii) contractual obligation by inference which both parties will be expected to honour the principles of contract law such as to be fair and truthful with one another; (iv) offer must be legally capable of acceptance; and (v) the offer must be clear and certain. A contract is formed when one party makes an offer and the other party agrees to accept the offer. Under the CA 1950 and English law, an offer is something that can be converted into an agreement by acceptance (Pheng, 2005). The court will first examine whether a valid offer was made to give the other party the option to enter into a contract by accepting the offer (Alam et al., 2017).

Referring to Amin & Nor (2011), for all contracts to be legally binding, an offer must be made and accepted. On the other hand, an invitation to treat does not have any legal recognition in contract law because the offeree can accept or reject it. Thus, if the landlord advertises rental accommodation, it is merely an invitation to treat. When there are parties that intend and agree to rent the accommodation, an offer is made. There is no legal implication to the invitation to treat. On the other hand, an offer is the promisor's first step in declaring his readiness for the contractual obligation.

ii. Acceptance

After a valid offer is made, the acceptance of the offer is the following phase in the formation of a valid agreement (Amin & Nor, 2011). By virtue of section 2(b) of the CA 1950, it states that:

“when the person to whom a proposal is made signifies his assent thereto, the proposal is said to be accepted.”

Generally, under contract law, when proposal is accepted, it becomes a promise. Section 7 of the CA 1950 states that for an offer to be turned into a promise, its acceptance must be absolute and unqualified. The decision in *Lau Brothers & Co v. China Pacific Navigation Co. Ltd. [1965] 1 MLJ 1*, indicates that if the parties are still in the negotiation phase, an agreement is not yet formed (Pheng, 2005). The acceptance must be communicated, and the offeror must be informed of it. If the student agrees to rent the accommodation, he or she must communicate with the landlord about his or her intention to accept the offer. This element is essential to bind the parties and creates a contractual obligation.

iii. Consideration

Consideration is one of the important elements to make a contract becomes valid. According to Valente (2010), a promise must be included in a written agreement or supported by consideration to be enforceable as a contract. In Malaysia, an agreement made without consideration is void based on section 26 of the CA 1950. By virtue of section 2(d) of the CA 1950, consideration is defined as:

“when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.”

Consideration is defined as “something in return”. In the scenario of a landlord and tenant, the consideration occurs when the landlord grants the tenant permission and access to the property, and in exchange, the tenant must pay rental fees as specified in a tenancy agreement signed by both parties.

iv. Capacity

The parties in the contract should have the capacity to enter into a contract (Sufian, 2012). Capacity to contract means the competency to enter into a valid contract. Section 11 of the CA 1950 provides that:

“every person is competent to contract, who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject”.

There are three key points in section 11 of the CA 1950 which are (i) age of majority; (ii) sound mind and (iii) he is allowed by any law to enter into a contract. Capacity in contract law referred to the age and the mental state of a person at the time he enters into a contract. General rule highlighted that when a minor entered into a contract, the contract becomes void unless when it falls under the exceptions. The exceptions are (i) contracts for necessities; (ii) contracts of scholarship; (iii) contract of apprenticeship; and (iv) marriage contract.

“Necessaries” are things that are necessary for the minor’s life and reasonable comfort, and it relies on the nature of the goods offered as well as the minor’s actual needs (Mei Pheng, 2005). In the case of a student (*if he is a minor: for the exception to the general rule under the elements of capacity*), which requires him to obtain off-campus accommodation, the contract that he entered into binds himself and he is obligated to execute his contractual obligations.

v. Intention to Create Legal Relations

To make a contract valid, the parties in the agreement must have the intention to create legal relations. According to Amin & Nor (2011), an agreement itself does not create a legally binding contract. It must be proven that the parties intended to be legally bound. This study argues that if the landlord and tenant agree on the terms and conditions of the tenancy agreement, they intend to create legal relations. This element will bind the parties and make the contract enforceable. According to Pheng (2005), the court would usually examine into the parties’ intentions based on the language and the context in which it is used.

vi. Certainty

An agreement's terms must be certain and cannot be vague. An agreement that is uncertain or cannot be made certain is void (Pheng, 2005). For example, if the landlord agrees to rent accommodation to the students without specifying the monthly rental amount and the details necessary for the rental, such an agreement is void on the grounds of uncertainty. In the case of *Karuppan Chetty v. Suah Thian [1916] FMSLR 300*, the requirement of certainty was not met when the parties agreed upon the granting of a lease 'at RM35.00 per month for as long as he likes.'

vii. Free Consent

Section 10 of the CA 1950 provides *inter alia* that all agreements are contracts if they are made by the free consent of parties. According to section 14 of the CA 1950, consent is said to be free when it is not caused by one or more of the following: (i) coercion; (ii) undue influence; (iii) fraud; (iv) misrepresentation; and (v) mistake. Section 19(1) of the CA 1950 provides that when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

viii. Lawful Object

When parties enter into an agreement in which the consideration or object of the agreement is unlawful, the agreement is void, and the court will not enforce it (Alsagoff, 2010). Section 24 of the CA 1950 states the consideration or object of an agreement is unlawful if (i) it is forbidden by law; (ii) it is of such a nature that, if permitted, it would defeat any law; (iii) it is fraudulent; (iv) it involves or implies injury to the person or property of another, or (v) the court regards it as immoral, or opposed to public policy. Section 2(g) of the CA 1950 provides that a void agreement is not enforceable by law. Illustration (e) and (h) to section 24 of the CA 1950 are examples of the agreements where the object is unlawful:

"(e) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful."

Based on the maxim *ex turpi causa non oritur actio*, the court will not cooperate in enforcing an illegal contract (Alsagoff, 2010).

ix. Formalities

English law only recognized the contract made by agreement and the simple contract for legality because the formality is important to serve many useful functions (Beatson et al. 2016). As contended by Yunrui (2003), the requirement of offer and acceptance in contract law results in a more explicit standard in contract formation. Accordingly, the written agreement creates formalities and makes it easier for the parties in a tenancy agreement or any contract to refer to. In addition, by referring to Wilkinson-Ryan & Hoffman (2015), even if the formality of contract formation has no legal effects, it greatly influences how parties interact with one another. This study believes the formalities of an agreement create an obligation on the parties to perform the promise and avoid breach of contract because the written agreement can be presented as clear evidence if the parties are in dispute.

Based on the discussion above, all tenancy agreements should contain all elements that are necessary to exist (Sufian, 2012) and these elements are essential for contract validity.

Recommendation

Due to the Covid-19 outbreak, students have been studying at home, and for the first time since the outbreak, UiTM Perak Branch, Tapah Campus welcomes all students back to campus for face-to-face classes. However, because the capacity of on-campus accommodation is limited to around 3388 students, the remainders must find off-campus accommodation. For diploma students between the ages of 18 and 23, and especially if this is their first time renting an accommodation, they should be aware of the contractual obligations. By referring to Valente (2010), decisions made by people for promises or onerous contracts are sometimes subject to risk. Therefore, this study recommends that students read and understand the terms and conditions of a tenancy agreement because they must enforce their promises as specified in the agreement. Failure to comply with the terms and conditions indicated in the tenancy agreement may result in a breach of contract, and the innocent party may initiate legal action against the breach parties. Because the students are competent to enter into a contract and the off-campus accommodation is one of the necessities for their study, the tenancy agreement becomes lawful and binds them. Students must always remember the legal maxim “ignorantia juris non excusat” which means that they cannot give an excuse of not understanding the law.

Conclusion

This study believes that urban and rural areas create different approach for a tenancy agreement. A landlord and a tenant also differ in both areas. It is concluded that as Tapah is a rural area, thus, the contractual obligations and the promises made by the parties bring the legal consequences that sometimes people would just ignore. This article hopes to deliver valuable knowledge, particularly to landlords and tenants, as it is one of the educator’s roles to educate and share the knowledge with the people around them. In a nutshell, the findings of this study can assist students and landlords to understand their contractual obligations when creating promises, whether oral or written.

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