FIRST DIVISION
August 6, 2018

No. 1-17-1474

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ADA SMITH,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 2015 CH 09290
	)	
CHICAGO HOUSING AUTHORITY,	)	Honorable
	)	Peter Flynn,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Justices Harris and Griffin concurred in the judgment.

O R D E R

¶ 1 *Held*: Dismissal of plaintiff's amended complaint is affirmed. Housing program participant cannot state a claim based on public housing agency's delay in granting her a pre-termination hearing or the failure to give her a hearing prior to refusing to extend the term of her moving papers.

¶ 2 Plaintiff Ada Smith is a beneficiary of a federally funded, subsidized-housing program administered by defendant the Chicago Housing Authority (CHA). Ms. Smith appeals the trial court's dismissal of her complaint against the CHA, which stems from her participation in that program. For the reasons that follow, we affirm the trial court's dismissal.

¶ 3 I. BACKGROUND

¶ 4 A. Housing Choice Voucher Program

¶ 5 The Housing Choice Voucher program (housing program) is a federal rent-subsidy program authorized by Section 8 of the United States Housing Act of 1937 (the Housing Act) intended to help "low-income families in obtaining a decent place to live." 42 U.S.C. § 1437f(a) (2014). The United States Department of Housing and Urban Development (HUD) oversees the housing program and local public housing agencies administer it in accordance with the Housing Act and its enabling regulations. See 42 U.S.C. § 1437f (2014); 24 C.F.R. § 982.1(a)(1).

¶ 6 In Chicago, the CHA administers the housing program and promulgates an administrative plan each year in accordance with HUD regulations. Chicago Housing Authority, Fiscal Year 2015 Administrative Plan (Administrative Plan), at 1-1. Under the Housing Act and its enabling regulations, the CHA gives housing program beneficiaries vouchers to rent properties in the private market. 24 C.F.R. § 982.302(a) (2014). When a beneficiary locates housing, he or she submits a request for tenancy approval and proposed lease to the CHA. Administrative Plan, at 9-2. The CHA then inspects the home to determine that the property satisfies housing quality standards. 24 C.F.R. §§ 982.401, 982.405 (2014). If the unit passes inspection, the public housing agency and property owner enter into a housing assistance payments (HAP) contract. 24 C.F.R. § 982.451 (2014). An owner's failure to maintain a property in accordance with the housing quality standards is a breach of the HAP contract. 24 C.F.R. § 982.452(b)(2) (2014).

¶ 7 When housing program participants seek to move, the CHA issues them a voucher, commonly known as "moving papers." HUD regulations require that moving papers be valid for a minimum of 60 days, (24 C.F.R. § 982.303(a) (2014) ("The initial term of a voucher must be at least 60 calendar days")) but the CHA's administrative plan provides program participants with a

90-day term (Administrative Plan, at 5-11 ("The initial voucher term will be 90 calendar days.")). The CHA must approve a term extension if it is "needed as a reasonable accommodation to make the program accessible to and usable by a person with disabilities." Administrative Plan, at 5-11. The CHA may also authorize "one or more extensions of the initial voucher term" (24 C.F.R. § 983.303(b)) (2014) if it determines that the extension is necessary for other reasons, including when tenants have "already submitted requests for tenancy approval that were not approved by the CHA" (Administrative Plan, at 5-12). However, unlike term extensions to accommodate program participants with disabilities—which are mandatory—other extensions are discretionary, and the presence of a specifically listed possible reason for an extension does not "guarantee that extension will be granted." *Id.* at 5-11-12.

¶ 8 If a housing program beneficiary fails to locate alternate housing "within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the CHA approves; otherwise, the family will lose its assistance." Administrative Plan, at 10-6. At the time of the events that gave rise to this case, the Administrative Plan provided that that the term of a tenant's voucher would not be suspended while the CHA processed a request for tenancy approval. Administrative Plan, at 5-12. HUD regulations have since been amended such that the CHA is now required to suspend "the initial or any extended term of the voucher from the date that the family submits a request for [public housing agency] approval of the tenancy until the date the [agency] notifies the family in writing whether the request has been approved or denied." 24 C.F.R. § 982.303(c) (2016).

¶ 9 B. Factual Background

¶ 10 Ms. Smith laid out her history in the housing program in the operative first amended complaint. She has been a beneficiary of subsidized housing administered by the CHA for more

than 25 years. Before the events that gave rise to this suit, she rented an apartment located on South Keeler Avenue in Chicago (the Keeler property) with her adult daughter and two grandchildren for seven years. The Keeler property was sold in September 2014, and the new owner did not wish to continue renting to a housing program participant. In addition, the Keeler property failed a housing inspection in February 2015. The new owner failed to cure the defects, so the CHA cancelled its HAP contract with the new owner.

¶ 11 Prior to that cancellation, Ms. Smith had obtained moving papers from the CHA on December 5, 2014, and found another apartment (the Cermak property) in January 2015. The owner of the Cermak property, however, failed to submit required documentation to the CHA until sometime in February 2015. Because of this delay, Ms. Smith requested an extension of her moving papers' term. A representative of the CHA told Ms. Smith that she could not get an extension until the Cermak property was rejected.

¶ 12 The Cermak property failed to pass a first housing inspection on March 20, 2015, and failed a second inspection on April 22, 2015. After the Cermak property failed the second inspection, Ms. Smith again requested an extension of her moving papers' term, which had expired in March 2014, while the CHA was still processing the request for tenancy approval for the Cermak property. The CHA also denied this request and, according to Ms. Smith, told Ms. Smith that her only options at this point were to "request a hearing" and "speak to legal aid."

¶ 13 During the period that Ms. Smith was seeking approval for the Cermak property, her relationship with the new owner of the Keeler property deteriorated. The CHA had stopped making any payments to the owner of the Keeler property in February 2015, when that property failed the housing quality standards inspection. So, "[a]fter getting permission from CHA," Ms. Smith moved her family out of the Keeler property on March 31, 2015, and into a friend's home,

where they lived in extremely overcrowded and difficult conditions, without CHA assistance, until after she filed this lawsuit.

¶ 14 On April 24, 2015, the CHA sent Ms. Smith a voucher expiration notice, which read:

> "Per CHA policy, if a family does not locate a new unit within the term of the voucher and any extensions, voucher assistance may be terminated. Please be advised that the Chicago Housing Authority (CHA) is proposing to terminate you from the [housing] program effective 5/31/15 due to the following reason[:] *** [y]ou submitted a [request for tenancy approval] prior to voucher expiration, but the unit you selected was not approved by the CHA and your voucher expired during the eligibility process."

The notice also advised Ms. Smith of her right to an informal hearing, which she timely requested. No action was taken on that request until after Ms. Smith filed this lawsuit and the trial court ordered the CHA to issue Ms. Smith new moving papers.

¶ 15 Ms. Smith alleged in her complaint that she incurred various damages. When Ms. Smith moved from the Keeler property, she allegedly incurred related costs, including the cost of renting a moving truck and damage to her personal possessions during the move. While living with her friend after moving out of the Keeler property, Ms. Smith and her family lived in a single bedroom and were unable to buy and store food in bulk during this period, increasing their grocery costs. Their belongings were stored in the basement of this property and Ms. Smith claimed some items were damaged by flooding. Ms. Smith also claimed that she suffered additional losses resulting from the emotional distress caused by living in an overcrowded home "where she really was not wanted" and the strain caused by the ongoing "threat of homelessness," which exacerbated her hypertension and resulted in dizziness, tiredness,

weakness, weight gain, and hair loss. Finally, she alleged that when she was notified that the CHA had proposed terminating her from the housing program, this caused her heart rate to "shoot up" because "she and her family would become homeless."

¶ 16 C. Procedural History

¶ 17 On June 12, 2015, Ms. Smith filed a verified complaint seeking declaratory and injunctive relief, along with a claim for money damages. On June 26, 2015, Ms. Smith filed a motion for a temporary restraining order requesting that the CHA provide her with new moving papers. The trial court granted her motion on July 10, 2015, and ordered the CHA to issue Ms. Smith moving papers within 14 days of its order. It did so, and Ms. Smith then obtained new housing using her new moving papers and continued housing assistance.

¶ 18 The CHA moved to dismiss Ms. Smith's complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2014)), and to strike portions of the complaint pursuant to section 2-603(b) of the Code (735 ILCS 5/2-603(b) (West 2014)). The trial court granted dismissal with prejudice "as moot" on December 18, 2015. Ms. Smith moved to reconsider on January 19, 2016, which the trial court granted only with respect to the portion of the complaint involving "monetary damages that are not moot." On October 13, 2016, the trial court struck that portion of the complaint as "insufficiently plead," but granted Ms. Smith leave to amend the complaint.

¶ 19 Ms. Smith filed the operative complaint on December 6, 2016, seeking declarations that the CHA violated her due process right under the United States Constitution, as enforced through section 1983 of title 42 of the United States Code (42 U.S.C. § 1983 (2014)) and the Housing Act (42 U.S.C. § 1437d(k) (2014)), by (1) refusing to extend her moving papers without first giving her a hearing, and (2) delaying the scheduling of a pre-termination hearing after it notified

her that her participation in the voucher program would be terminated. She sought compensatory damages for economic loss and emotional distress, together with attorney fees and costs.

¶ 20 The CHA moved to dismiss the first amended complaint under section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2014)), arguing that (1) Ms. Smith did not have an enforceable due process right or a private right of action under the Housing Act; (2) her damage claims were too "speculative" and "insufficient" to establish that the CHA caused her alleged injuries; and (3) by providing her with moving papers, the CHA had rendered Ms. Smith's claims moot.

¶ 21 On May 12, 2017, after hearing argument, the trial court granted the CHA's motion to dismiss having found that "plaintiff cannot plead a viable claim for damages," because she "received and successfully used 'moving papers,' " and "remains a participant in the [housing] program." The court stated that Ms. Smith's "only potential damage claim would arise from [the] CHA's alleged delay in scheduling an informal hearing," but reasoned that Ms. Smith could not show "that (had there been no TRO) there would have been an *undue* delay in scheduling such a hearing." (Emphasis in original.) The court concluded that "the gap between [her] request for an informal hearing and CHA's issuance of 'moving papers' *** was not *per se* actionable or undue," and "to hold otherwise would inject a damage claim into every case in which, though the voucher participant receives all the benefits sought, there is any time lapse between the participant's request and its granting." This appeal followed.

¶ 22 II. JURISDICTION

¶ 23 Ms. Smith timely filed her notice of appeal from the trial court's May 12, 2017, order on June 8, 2017. We have jurisdiction to review the circuit court's judgment under Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered by the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 24 III. ANALYSIS

¶ 25 This case was considered by the same trial judge that considered *Clark v. Chicago Housing Authority*, 2018 IL App (1st) 1171475-U. The trial judge did not consolidate those two cases; nor do we. Although we declined to consolidate these two cases, much of our reasoning in *Clark* applies to the facts of Ms. Smith's case because the issues raised are quite similar. Both Ms. Smith and Ms. Clark were represented by the same attorney at LAF. At certain points, we may reference Ms. Clark's case in this order and the language of our analysis will be similar.

¶ 26 The essence of Ms. Smith's claim is that she had a property interest in her participation in the housing program that required a due process hearing before she could be put in a situation where the CHA was not paying any rent subsidy on her behalf and she no longer had any right to look for new housing. We think this leaves two questions for our review. The first was answered by the trial court—whether the CHA's delay in providing Ms. Smith with a pre-termination hearing, after it advised her that she was to be terminated from the voucher program, gives rise to a due process claim or a claim under the Housing Act. The second question, which Ms. Smith correctly points out is not fully addressed by the trial court's decision, is whether she was entitled to a hearing after the CHA refused to extend her moving papers. We address these two questions in turn. We also address Ms. Smith's argument that the trial court improperly dismissed her complaint under section 2-619, because the CHA did not allege an affirmative matter that defeated her cause of action. And although the parties spend significant time in their briefs discussing whether there is a private right of action under the Housing Act, we do not address this issue since we agree with Ms. Smith that, to the extent she has an entitlement under that Act, she could not be deprived of that entitlement without due process.

¶ 27 A. Delay in Pre-termination Hearing

¶ 28 Ms. Smith's claim rests on the premise, with which we fully agree, that she has a due process right to a hearing before she can be terminated from the housing program. Under the due process clause of the fourteenth amendment, no person shall be deprived "of life, liberty, or property, without due process of law ***." U.S. Const. amend XIV. "The essence of procedural due process is meaningful notice and a meaningful opportunity to be heard." *Trettenero v. Police Pension Fund of City of Aurora*, 333 Ill. App. 3d 792, 799 (2002). Claims of procedural due process violations involve a two-part inquiry: "(1) is there a property or liberty interest protected by due process; and (2) if so, what process is due, and when must that process be made available?" *Simpson v. Brown County*, 860 F.3d 1001, 1006 (7th Cir. 2017).

¶ 29 A person must have "a legitimate claim of entitlement" to a public benefit for the benefit to be recognized as a constitutionally protected property interest. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972). Housing benefits "are a matter of statutory entitlement for persons qualified to receive them" because the benefits provide the means to afford an essential condition for living. *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970); see also *Khan v. Bland*, 630 F.3d 519, 527 (7th Cir. 2010) ("[P]articipants who have been issued a certification for rent assistance have a property interest in the assistance and must be heard before being expelled from the program.").

¶ 30 Ms. Smith was notified of her right to a pre-termination hearing on April 24, 2015. She never got that hearing. But as the CHA and the trial court point out, she obtained everything she could have received in that hearing when the CHA was ordered to provide her with new moving papers on July 10, 2015.

¶ 31 One of Ms. Smith's claims is that the CHA illegally delayed providing that hearing. She

points to a Housing Act regulation that requires public housing agencies to "proceed with [a] hearing in a reasonably expeditious manner upon [] request" in cases "[w]here a hearing for a participant family is required under" the act. 24 C.F.R. § 982.555(d) (2014). The CHA responds that Ms. Smith filed suit before it could schedule a hearing, and that upon being sued, the CHA promptly "settled" with her by providing the new moving papers and "agreeing to the entry of an order" confirming the same.

¶ 32 We agree with the trial court that Ms. Smith cannot show "that (had there been no TRO) there would have been an *undue* delay in scheduling such a hearing" (emphasis in original), and also agree that "the gap between [her] request for an informal hearing and CHA's issuance of 'moving papers' *** was not *per se* actionable or undue." While the notification that Ms. Smith received on April 24, 2015, notified her that the proposed termination would be effective May 31, 2015, Ms. Smith does not allege that anything in fact occurred on that date and the notification she received only advised her of a "proposed" termination.

¶ 33 The regulation that Ms. Smith cites provides that the CHA must give a participant "prompt written notice" and that the CHA must proceed with the hearing in a "reasonably expeditious manner." 24 C.F.R. §§ 982.555(c)(2), 982.555(d) (2014). Within one week of determining that Ms. Smith was subject to termination from the housing program because she failed to secure approved housing during her moving papers' term, the CHA sent her a notice of proposed termination and offered her a hearing, which she timely accepted. Following that notice there was a delay of approximately six weeks before Ms. Smith was given all the relief she could have received in a hearing.

¶ 34 Ms. Smith provides no support in the case law, regulations, or statute that supports a claim that these six weeks represented an undue delay that violated her constitutional or statutory

rights. Most of the cases that Ms. Smith cites deal with a housing agency *refusing* to grant a hearing and are discussed later in this order. Ms. Smith notes that in *Jackson v. City of Aiken Housing Authority*, Civ. A. No. 1:16-2831-RMG, 2017 WL 4324856, at *4 (D.S.C. Sept. 26, 2017), the court cited language from section 982.555 of title 24 of the Code of Federal Regulations (24 C.F.R. § 982.555(d) (2014)) that requires a housing agency to hold an "expeditious" hearing. *Id.* But the *Jackson* court referred to the regulation only in the context of noting that the plaintiff's counsel's letter to the local housing agency, asking for a response to his request for a hearing within 14 days (not to schedule or hold one), was "reasonable and did not 'impair' the hearing process." *Id.*

¶ 35 The only case uncovered by this court regarding delay in scheduling a hearing for a voucher program participant is the unpublished decision in *Lowery v. District of Columbia,* No. Civ. A. 04-1868(RMC), 2006 WL 666840 (D.D.C. Mar. 14, 2006). In that case, the court held that a participant who, like Ms. Smith was stuck in limbo without a voucher, without access to a voucher, and without housing, stated a claim for the housing agency's failure to schedule a hearing. *Id.* at *11. In contrast to this case, however, the delay there had been five months (not six weeks) (*id.* at *3), and the housing agency took the position that the plaintiff did not have a protected property interest, cancelled a scheduled hearing with little notice to the plaintiff, and then refused to reschedule (*Id.* at *8). Those facts are not present here.

¶ 36 In short, we agree fully with Ms. Smith that she was entitled to a hearing at the point when the CHA notified her that she would be terminated from the housing program but also agree with the trial court that the failure to schedule that hearing for six weeks did not give rise to a claim. For the same reasons that we articulated in *Clark v. Chicago Housing Authority*, 2018 IL App (1st) 1171475-U, ¶¶ 25-31, we agree with the trial court that the CHA did not deprive

Ms. Smith of her due process when it did not schedule a pre-termination hearing before she filed suit on June 12, 2015.

¶ 37 B. Right to a Hearing on Extension of Moving Papers

¶ 38 Ms. Smith argues that the trial court only addressed part of her claim—that related to the damages flowing from the "delay" in scheduling a pre-termination hearing. According to Ms. Smith, she also had a right to a hearing before she was deprived of an extension on her moving papers. As Ms. Smith points out, when the moving papers expired, the CHA was no longer making any rent payments on her behalf and she was no longer authorized to look for new housing. She argues that she was, in effect, terminated from the housing program before she had received her notice of termination and without any pre-termination hearing.

¶ 39 We reject this claim just as we rejected its counterpart in *Clark*, 2018 IL App (1st) 1171475-U, ¶¶ 32-40. The problem with this claim is that any extension of a housing program participant's initial 90-day term for moving papers is completely discretionary. It is well settled that "a benefit is not a protected entitlement if government officials may grant or deny it in their discretion." *Town of Castle Rock, Colorado v. Gonzales*, 545 U.S. 748, 756 (2005). Absent a " 'framework of factual conditions that could be explored at a due process hearing,' " there is no basis for holding such a hearing. *Pickett v. Housing Authority of Cook County*, No. 15-CV-00749, 2017 WL 4281054, at *10 (N.D. Ill. Sept. 27, 2017) (quoting *Fincher v. South Bend Heritage Foundation*, 606 F.3d 331, 334 (7th Cir. 2010)).

¶ 40 Under the applicable regulations that were operative at the time, when program participants received moving papers, the term continued to run while the CHA reviewed a request for tenancy approval and expired in 90 calendar days. Administrative Plan, at 5-11. Once the term expired, beneficiaries were "no longer eligible to search for housing under the

program." *Id* at 5-12. Although HUD regulations have since been amended to require that all public housing agencies toll moving paper terms when tenants submit a request for tenancy approval (see 24 CFR § 982.303(c) (2016)), that was not the case when Ms. Smith received her moving papers. Indeed, the CHA's 2015 administrative plan cautioned that the moving papers' 90-day term would "not be suspended while the CHA processes the request." Administrative Plan, at 5-12. The plain language of the HUD regulations and the CHA administrative plan at the time Ms. Smith got her moving papers made it clear that extensions were only mandatory when the beneficiary requesting the extension was disabled and the accommodation was necessary because of that disability. *Id.*; 24 C.F.R. § 982.303(b)(1) (2014). The decision to grant an extension for "reasons beyond the family's control" was at the CHA's discretion. Administrative Plan, at 5-12.

¶ 41 Prior to her moving papers' expiration, Ms. Smith requested an extension, which was denied. After the Cermak property had failed reinspection and her moving papers had expired, Ms. Smith requested another extension, which was also denied. Both of these decisions were discretionary. We are sympathetic to the stress and frustration that Ms. Smith must have experienced and note that the amended HUD regulations should prevent similar cases in the future because the CHA is now required to toll the expiration of tenants' moving papers while it reviews new housing units for approval. See 24 CFR § 982.303(c) (2016). But since an extension of her moving papers was discretionary and, therefore, not "a protected entitlement," the denial of which would require due process (*Town of Castle Rock*, 545 U.S. at 756), Ms. Smith cannot state a due process claim based on the CHA's refusal to provide her with a hearing on that decision. Moreover, it is unclear what any hearing would focus on since the CHA had complete discretion to extend or not extend the 90-day period.

¶ 42 While the confluence of events left Ms. Smith temporarily without a housing subsidy or even the right to look for new housing, this was not a termination of program participation and there was no CHA decision that entitled Ms. Smith to a hearing, prior to the decision reflected in the April 24, 2015, letter that also offered her a hearing.

¶ 43 Judge Shadur highlighted the flaw in Ms. Smith's argument in *Luvert v. Chicago Housing Authority*, 142 F. Supp. 3d 701 (N.D. Ill. 2015). As he recognized, the plaintiff there had no constitutional claim of entitlement to a hearing on voucher renewal because "HUD regulations establish no arguable expectation in granting of an extension because extensions are left entirely to the discretion of the [agency]." *Id.* at 715. Ms. Smith attempts to distinguish *Luvert* on the basis that the plaintiff in that case was an applicant in the housing program, rather than a participant. However, as Judge Shadur pointed out, that was a distinction that gave participants (and not applicants) the right to a hearing prior to termination from the program. *Id.* at 709. At all times during the course of these events, this is a right that Ms. Smith retained.

¶ 44 None of the cases that Ms. Smith cites support her claim that she had the right to a hearing after the CHA refused to extend the term of her moving papers. In most of those cases the plaintiffs were denied a hearing prior to being terminated from the housing program. See, *e.g.*, *Simmons v. Drew*, 716 F.2d 1160, 1162 (7th Cir. 1983) (participants in the voucher program have the right to pre-termination hearing). In *Vega v. Orlando Housing Authority*, No. 6:14-cv-1700-Orl-22GJK, 2015 WL 5521917 (M.D. Fla. Sept. 15, 2015), a housing agency denied the plaintiff's request for moving papers and terminated her housing assistance because a member of her household was cited for a criminal offense, but did not offer, and repeatedly denied, the plaintiff's requests for a hearing before terminating her housing program participation. *Id.* at *1. Similarly, in *Oruillian v. Housing Authority of Salt Lake City*, No. 2:10-cv-276 CW, 2011 WL

6935039 (D. Utah Dec. 30, 2011), the plaintiff was evicted from her apartment, at which point the housing agency was required by regulation to provide her with moving papers, unless there was a basis for terminating her from the program, in which case she was entitled to a pre-termination hearing. *Id.* at *5-6. However, the housing agency there also refused her requests for a hearing. *Id.* at *2. And in *Jackson*, Civ. A. No. 1:16-2831-RMG, 2017 WL 4324856, the plaintiff's *initial* request for moving papers was denied on the basis that she had a balance due to her landlord. *Id.* at *3. While that may have been an appropriate basis for denial, as the *Jackson* court pointed out, the plaintiff would have been entitled to a hearing before that determination was made. *Id.* at *3.

¶ 45 Finally, in *Pickett v. Housing Authority of Cook County*, No. 15-CV-00749, 2017 WL 4281054, at *11 (N.D. Ill. Sept. 27, 2017), the court held that the public housing agency violated due process by not holding a hearing before terminating a participant from the program because the tenant did not "lease up" before voucher expiration. The court in *Pickett* expressly recognized that continued participation in the housing program and moving paper expiration are "separate concepts." *Id.* at *9. In contrast to this case, the housing agency there had adopted an administrative plan that stopped the clock on moving paper expiration while the housing agency reviewed a request for tenancy approval. As the court noted, by doing so the housing agency had made a discretionary decision mandatory and therefore gave the voucher holder a "legitimate claim of entitlement" that expiration would be tolled. *Id.* at *10. Ms. Smith had no similar expectation or entitlement here.

¶ 46 In all of these cases, the program participant had an entitlement under the housing program giving them the right to a hearing prior to losing that benefit. In this case, in contrast, the CHA made a discretionary decision not to extend Ms. Smith's voucher and she had no

entitlement to an extension, and thus no right to a hearing before an extension was denied.

¶ 47 C. Basis for Dismissal

¶ 48 In her reply brief, Ms. Smith argues that the trial court erred in dismissing this case under section 2-619(a)(9) because the CHA did not allege or prove any affirmative matter that defeated her claim. Section 2-619(a)(9) provides that a court may dismiss an action because "the claim asserted *** is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2014). A defendant moving to dismiss under section 2-619(a)(9) "admits the legal sufficiency of the complaint[] but asserts the existence of an external defect or defense that defeats the cause of action." *Winters v. Wangler*, 386 Ill. App. 3d 788, 792 (2008). In contrast, a section 2–615 motion to dismiss "denies the legal sufficiency of the complaint." *Id.*; 735 ILCS 5/2-615 (West 2014).

¶ 49 An appellate court reviews a trial court's ruling on motions to dismiss under sections 2-615 and 2-619(a)(9*) de novo* and "can affirm on any basis present in the record." *Riverdale Industries, Inc. v. Malloy*, 307 Ill. App. 3d 183, 185 (1999). Although a motion to dismiss was filed under 2-619(a)(9), the appellate court can analyze it as a motion to dismiss under section 2-615, where, as here, the motion challenges the legal sufficiency of the complaint. *Worley v Barger*, 347 Ill. App. 3d 492, 494 (2004).

¶ 50 The trial court here may have thought that it was relying in part on an affirmative matter in that, after the complaint was filed, the CHA gave Ms. Smith new moving papers and mooted her claim for a pre-termination hearing. This was an "affirmative matter." We deal here, however, with the remainder of her claim, regarding the delay in scheduling that hearing and the claim that Ms. Smith was entitled to a hearing on the refusal to extend her moving papers. As to that remaining part of her claim, we agree with Ms. Smith that it should have been analyzed

under section 2-615. That is what we have done in this case, and we affirm on that basis.

¶ 51 IV. CONCLUSION

¶ 52 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 53 Affirmed.