

FLINN, J.A.: (orally)

On July 29, 1997, following the hearing of an application by the respondent (landlord) seeking an order for the payment of money by the appellant (tenant), the Residential Tenancies Board (the **Board**) filed a Report pursuant to s. 16(2) of the **Residential Tenancies Act**, R.S. Chap. 401 (the **Act**) which was in force at that time.

In its Report the Board found, as a fact, that the tenant owed to the landlord arrears of rent, the cost of new carpet, cleaning and other costs. The individual amounts which the Board found to be owing for these items totaled \$2778.28. The Board also found that the landlord was holding the tenant's security deposit in the amount of \$298.35 (including interest).

Notwithstanding these factual findings, and without any explanation, the Board recommended that the tenant pay to the landlord the sum of \$1316.17.

The landlord, pursuant to s. 16(4) of the **Act**, filed a Notice of Objection in the Supreme Court of Nova Scotia seeking an order to vary the recommendation of the Board. The landlord submitted that the recommendation of the Board was unsupported by, and contrary to, the Board's factual findings. The landlord sought an order to vary the amount payable by the tenant, from \$1316.17 to \$2479.93; namely, the amount owing by the tenant (\$2778.28) less the security deposit. (\$298.35)

The Supreme Court had the power, under s. 16(5)(c) of the **Act**, which was in force at that time, to “vary or reverse the report and any finding therein.”

At the hearing of the landlord’s Notice of Objection, before Justice Haliburton, both the landlord and the tenant were represented by counsel. Counsel were unable to provide the court with an explanation of the discrepancy between the amount found to be owing by the tenant, and the amount recommended to be paid by the tenant. The written recommendation of the Board was the only record of the Board’s hearing before the court. Justice Haliburton decided that there was no logical basis for the discrepancy; and he suggested that it was “obviously a clerical error.” He varied the recommendation of the Board so as to comply with the amount found to be owing. He ordered the tenant to pay to the landlord the sum of \$2479.93.

The tenant appeals to this court. She claims that Justice Haliburton should have remitted the matter back to the Board, because there was no evidence before him upon which he could conclude that the Board made a clerical error.

As Justice Freeman said in **Chisholm v. Frazer** [1996] N.S.J. No.364 (NSCA) of this court’s role in appeals of residential tenancy matters:

The duty of this court is to determine whether there was evidence before the Supreme Court in support of its findings, and to ensure that no reversible error of law occurred.

We are of the unanimous opinion that the recommendation of the Board clearly provided the evidence to support Justice Haliburton’s finding that there was an error

(be it clerical, mathematical or otherwise) in the amount recommended to be paid by the tenant. There is no other explanation. The Board does not have discretionary authority under the **Act** to make a recommendation, for the payment of money, which is inconsistent with its factual findings as to what amount of money is owing.

Justice Haliburton had the statutory authority to vary the Board's recommendation, and he made no error in law in so doing.

The appeal is dismissed. Under all of the circumstances there will be no order as to costs.

Flinn, J.A.

Concurred in:

Freeman, J.A.

Hart, J.A.